SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 517.

THE UNITED STATES, APPELLANT,

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY AND THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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POOR

a United States District Court, District of New Jersey.

United States of America *vs.* The Delaware, Lackawanna & Western Railroad Co. et al.	On petition.

Docket entries.

1913, Feb. 13. Petition filed.
" " 13. Subpœna issued.
" " 25. Subpœna returned; served on Delaware, Lackawanna & Western R. R. Co. Feb. 15, and on Delaware, Lackawanna & Western Coal Co. Feb. 20; and filed.
" Mar. 6. Order extending time of D., L. & W. Coal Co. to answer filed.
" " 6. Order extending time of D., L. & W. Railroad Co. to answer filed.
" " 17. Answer of D., L. & W. Railroad Co. filed.
" " 17. " " D., L. & W. Coal Co. filed.
" Aug. 22. Notice of trial filed.
" Oct. 10. Affidavit, stipulation, and order to take depositions filed.
" " 16. Notice of trial filed.
" Dec. 29. " " " "
1914, Jan. 10. Certificate of public importance filed.
" " 24. Testimony on behalf of petitioner filed.
" " 27. Final hearing. Decision reserved.
" " 31. Testimony, exhibits, and pleadings filed.
" Apr. 7. Opinion filed.
" " 24. Final decree dismissing petition filed.
" " 24. Assignment of errors, petition of appeal, and order allowing appeal filed.
B 1914, Apr. 29. Praecipe for transcript of record on appeal of petitioner.
1914, May 7. Order allowing stenographer's fees filed.
" " 26. Order to vacate order allowing appeal of April 24 filed.
" " " Assignments of error filed.
" " " Petition for appeal filed.
" " " Order allowing appeal filed.
" " " Order as to transcript filed.
" June 1. Praecipe for transcript of record on appeal filed.

COPY

1

District Court of the United States,

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA, Petitioner, *vs.* THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, and THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY, Defendants.	In Equity.

2

First hearing for taking testimony in the above-entitled cause before Richard S. Wilson, Esquire, Examiner.

Met pursuant to agreement of counsel, at the offices of the Delaware, Lackawanna and Western Railroad Company, 90 West Street, New York City, on Thursday, the 6th day of November, A. D. 1913.

3

APPEARANCES:

FREDERIC R. COUDERT, Esquire, and HOWARD THAYER KINGSBURY, Esquire, for the United States of America.

JOHN G. JOHNSON, Esquire, and WILBUR L. BALL, Esquire, for the Delaware, Lackawanna and Western Coal Company.

WILLIAM S. JENNEY, Esquire, and JOHN L. SEAGER, Esq., for the Delaware, Lackawanna and Western Railroad Company.

4 WILLIAM S. JENNEY, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Examined by Mr. Coudert:

Q. What is your position at present, if you have any connection with the Delaware, Lackawanna and Western Railroad Company?

A. I am Vice-President and General Counsel.

Q. What is your position with the Coal Company?

A. I am General Counsel.

Q. Will you state shortly what your connection has been with the Railroad Company; what offices you have held?

A. I was local attorney for the Railroad Company at Syra-
5 cuse, I had charge of their matters in several counties in the State of New York, until I came to New York as General Attorney, on the first day of July, 1905. I was General Attorney for about three or four years, when I was made Vice-President and General Counsel and have acted in that position since.

Q. And as such you are very familiar with the general affairs of the Railroad Company?

A. Yes, sir.

Q. (showing witness a paper): Will you look at that and see if it is a correct copy of the certificate of incorporation of the Delaware, Lackawanna and Western Coal Company?

A. Yes, sir.

6 Counsel for petitioner offers the same in evidence and the same is marked "Petitioner's Exhibit P1."

Q. The Delaware, Lackawanna and Western Railroad Company has, for a number of years past, owned many coal mines, has it not?

A. Yes, sir.

Q. And it has exploited those mines and transported the coal?

A. It has been engaged in mining coal from the coal lands which it owned in fee and under lease for upwards of fifty years.

Q. In addition to the coal mined by it, it also purchased 7
coal, did it not?

A. Yes, sir.

Q. Were those purchases made from mines along its lines?

A. All from mines with which it had direct connection.

Q. Can you give me now, or at some future time, a memorandum showing the amount or the percentage of coal purchased by the railroad during the year 1909; we will say, along its lines compared with the whole output of the mines along its lines?

A. I don't believe that question could be answered; that would depend by what you mean "along its lines."

Q. Mr. Jenney, will you kindly give me the tonnage pur- 8
chased by the railroad during the last three years back, from January 1st, last?

A. 1908, 1,994,000 tons; 1909, 1,836,000 tons; 1910, 1,658,000 tons, and 1911, 1,579,000 tons.

Q. How is the price of that coal fixed; by the railroad entirely?

A. The coal purchased?

Q. The coal purchased.

A. It is fixed by agreement, most of the coal, which we purchased, was purchased under the basis of the 65 per cent. contract.

Q. You have such 65 per cent. contracts?

A. Yes, most of the coal, which we have purchased in the 9
past, has been on the basis of the 65 per cent. contract, and I think at the present time the Railroad Company is purchasing only coal which is being mined under a mining agreement from land which it either owns in fee or under lease.

Q. At the present moment?

A. At the present time.

Q. You discontinued purchasing from the independent collieries?

A. I don't think the railroad company is at the present time purchasing any coal except its own coal under lease or in fee, unless there be some where it is still

10 purchasing coal under the terms of some written agreement which is still in force.

Q. Was that change in the policy of the road due to the abrogation of the 65 per cent. contract under the decree of the Supreme Court?

A. To that and other causes.

Q. Does the coal company purchase coal from the independent collieries?

A. Yes, sir.

Q. Could you give me the figures showing the amount of coal purchased by the Coal Company from independent collieries?

A. Sources other than the Railroad Company?

11 Q. Sources other than the Railroad Company, since its inception?

A. I think those figures can be obtained.

Q. If you will be good enough to obtain them and put them in the record, I will be obliged to you.

A. 1909, the Coal Company purchased from others than the Railroad Company, 3,847 tons; 1910, 2,267 tons; 1911, 6,600 tons; 1912, 9,204 tons; 1913, to October 30, 310,645 tons.

Q. Did you have to do with the formation and organization of the Delaware, Lackawanna and Western Coal Company, Mr. Jenney?

A. Yes, sir.

12 Q. As General Counsel for the Railroad Company?

A. Yes, sir.

Q. Will you tell me, in your own way, of the organization of that company; when it was first suggested and how it was brought about?

A. To do that I will have to put it in chronological order.

Q. That is what I want.

A. At a meeting of the Executive Committee of the Board of Managers of the Delaware, Lackawanna and Western Railroad Company, held on the twenty-first day

of June, 1909, a resolution was presented for passage by 13
the Board of Managers, which included among other things
the following: "That the officers of the Company be and
are hereby authorized to execute on behalf of this Com-
pany, a contract in substantial compliance with the terms
of the proposed contract hereto attached, for the sale of
all coal mined and purchased by the Company within the
State of Pennsylvania." At a special meeting of the Board
of Managers of the Railroad Company held on the twenty-
second day of June, 1909, that resolution was approved,
and a resolution was adopted, providing: "That the officers
of the Company be authorized to execute, on behalf of the
Company, the contract mentioned." That constitutes a
record of the action of the Railroad Company in connec- 14
tion with this matter. The Delaware, Lackawanna and
Western Coal Company was incorporated under the laws
of the State of New Jersey by certificate filed June 29th,
1909, which you have introduced in evidence, and the first
meeting of the incorporators was held on the thirtieth
day of June, 1909, and the first meeting of the Board
of Directors was held on the first day of July, 1909. The
first Board of Directors was constituted of Mr. Edward
E. Loomis, Mr. Percy R. Pyne, 2nd, who were two of the
incorporators, and Messrs. William H. Truesdale, George
H. Gardner, Henry R. Taylor, George F. Baker, Jr., and
James A. Stillman. At the meeting of said Board of Di-
rectors held on the first day of July, 1909, a resolution 15
was adopted, which I will read into the minutes. "The
President presented a draft of proposed contract of the
Delaware, Lackawanna and Western Railroad Company, a
copy of which is attached hereto, for the sale of its coal
upon terms as stated therein, and on motion of James A.
Stillman, seconded by Mr. Percy R. Pyne, 2nd, it was
unanimously resolved that this Company agree to purchase
the coal described in said contract upon the terms stated
therein and agree to all of the terms and conditions of
such contract, and that the proper officers of this company

16 be and are hereby authorized to execute on behalf of this company, under its corporate seal, and to deliver in the State of New Jersey, such proposed contract, when executed, copy of which to be annexed to these minutes. Further resolved, that this company agree with the Railroad Company as to the terms of lease and as to the other matters provided to be agreed upon in such contract and that the proper officers of this Company be and are hereby authorized to execute such lease and other contracts therein provided for, as may be agreed upon." That constituted the action of the Coal Company. The contract was executed by the officers of the two companies and became operative on the second day of August, 1909.

17 Q. And that, to interrupt you, that is the contract which is annexed as "Exhibit A," to the original petition?

A. Yes, sir. Now, the contract which was annexed to the resolution of the Board of Directors of the Railroad Company, that was the identical contract, with the exception that the Delaware, Lackawanna and Western Coal Company was not named in the contract, and it was not executed and the contract annexed to the minutes of the Coal Company, was that identical contract, except that it was not executed.

Q. The names were blank?

A. The execution was blank, the names were filled in at the time the Coal Company adopted the contract.

18 Q. I understand, and in the first contract the Coal Company was not named?

A. The contract annexed to the minutes of the Railroad Company, as I recollect it—I want to give you exact copies of the papers, so that you won't have to encumber the record with these different contracts.

Q. Mr. Jenney, when did you first hear of the proposition to organize a separate company to take over the coal selling business?

A. Why, that I can't recall, Mr. Condert, whether that form of organization was discussed in the year 1907 or

not; I think there was some discussion of that form of 19
organization in the year 1907, but I can't testify positively that that form of organization was ever discussed by anybody connected with the Railroad Company prior to the month of May, 1909.

Q. Do you remember who first suggested or discussed with you the possibility or feasibility of the formation of a separate company?

A. That was a matter of discussion between some of the officers of the Company, I think, in the first instance.

Q. And the matter was referred to you as General Counsel?

A. I think the matter was perhaps first broached by 20
me and suggested by me.

Q. Then the suggestion for the formation of a separate company emanated from you as counsel for the Railroad Company?

A. That is my recollection.

Q. And you, of course, consulted with the officers of the Railroad Company in regard to it?

A. Yes, sir.

Q. Who prepared the contract subsequently executed which was presented to the Board of Directors of the Railroad Company in the first instance?

A. The contract was originally drafted by me personally and was subsequently submitted to and modified somewhat 21
by Mr. Francis L. Stetson.

Q. So that contract was drawn in substantially the form in which we find it, before the organization of the Company was completed?

A. Before it was formally completed; before the certificate was filed.

Q. Do I understand you to say that you drew the certificate and other papers for the incorporation of the Coal Company?

A. No, I assisted in that; Mr. Stetson's assistant, Mr. Gardner, did a good deal of the work in connection with

22 that and one or two of my assistants did some work in connection with that. I think I best answer that question by saying that all the papers in connection with the formation of the coal company were prepared under the general direction of myself and Mr. Stetson.

Q. And I take it that this formation of this Company and the steps leading up to it and the discussion regarding it, were due to the decision of the Supreme Court in the so-called "Commodities case."

A. I think it is fair to say that no change in the method of selling of the coal of the Railroad Company by itself directly, would have been had, except for the decision in the "Commodities case." There was no possible reason which
23 would require us to make this or deprive the Railroad Company of the profits from the sale of coal and I assume that the management of the Company would not have taken those profits away from the Railroad Company, except for that decision.

Q. You considered it legal for the Railroad Company to mine and sell its own coal as far as the Pennsylvania constitution and law were concerned?

A. That has been expressly held by the Supreme Court of Pennsylvania in more than one case.

Q. And following those adjudications, you continued down to the time of this change to mine and sell your own coal?

24 A. Yes, sir, as far as the Delaware, Lackawanna and Western Railroad is concerned, it has an express charter right from the Legislature of Pennsylvania, not only to own coal mines, but to mine coal.

Q. This charter was not affected or abrogated by the Pennsylvania constitution?

A. No, we were not affected by the Pennsylvania constitution and the Delaware, Lackawanna and Western Railroad has a special charter of its own; we are not under the provisions of the general Pennsylvania statutes, that does not apply to us at all.

Q. I think you explained down to the time you mined your own coal, but you didn't, I think, bring your statement down to the organization of the Coal Company, to the time when the dividend was declared by the Delaware, Lackawanna and Western Railroad Company, and the circular asking for subscriptions was sent out by the Treasurer of the Railroad Company? 25

A. When we formed the Coal Company, it was thought that an opportunity should be given to all stockholders of the Railroad Company to subscribe to the stock of the Coal Company if they desired to do so, so that at the request of Mr. Stetson and myself, Mr. Chambers sent to the stockholders of the Railroad Company, a circular advising them of the proposed organization of the Coal Company and enclosing a form of subscription for this stock, which Mr. Stetson and myself prepared. 26

Q. You prepared, I think, and furnished me a copy of that?

A. That circular with the form of subscription, was sent to all the stockholders, and was as follows:

Form of Circular.

To the Stockholders of the Delaware, Lackawanna and Western Railroad Company:

An extra dividend of fifty per cent. has been declared by the Board of Managers on the capital stock of the Company, payable on July 20th, 1909, to stockholders of record at the close of business on July 1st, 1909. 27

In conformance with the decision recently rendered by the United States Supreme Court, declaring that this Company cannot lawfully transport in interstate commerce coal owned by it, a coal selling company has been organized under the Laws of the State of New Jersey, under the name of Delaware, Lackawanna & Western Coal Company, the capital stock of which will be $6,800,000.00, divided into 136,000 shares of $50.00 each par value.

It is proposed that the Delaware, Lackawanna & Western Railroad Company, as the Seller, shall contract with said

Coal Company, as the Buyer, to sell and deliver the coal mined and purchased by the Railroad Company to the Coal Company at the mines.

The stockholders of the Railroad Company are hereby invited to subscribe to the capital stock of the Coal Company at the rate of one share of the latter for each four shares of the capital stock of the Railroad Company held by the several stockholders as shown by the books of the Company at the close of business July 1st, 1909.

As it is deemed undesirable to issue part shares as scrip, or otherwise, any stockholder whose pro rata Coal Company subscription may entitle him to a part share, may, on payment in cash of the additional amount necessary, acquire a full share instead of the part share alloted to him.

Herewith subscription blank which each stockholder should sign and have duly witnessed in the event he desires to subscribe for the stock of the Coal Company on the basis set forth herein. Such blank contains an order on the Treasurer of the Company authorizing and directing that one-half of the dividend of fifty per cent. due and payable on July 20th, 1909, be paid to the Coal Company in satisfaction of the subscription of such stockholder to the capital stock of the Coal Company. The other half of such dividend will of course be paid in cash. Certificate for the number of shares of stock so paid will be issued in the name of and delivered to the stockholders as the latter may direct.

It is urged by the Company's legal advisors that the proposed selling contract be made operative as early as possible.

It is therefore respectfully requested that the stockholders of the Company take prompt action on the several matters submitted to them hereby.

31

Form of Subscription.

Mr. A. D. Chambers,
Secretary & Treasurer,
Del., Lack. & Western Railroad Co.,
90 West Street, New York.

Dear Sir:—

I, the undersigned, hereby subscribe hereto my name, post-office address, and the number of shares of stock at the par value of Fifty Dollars ($50.00) each, which I agree to take in the Delaware, Lackawanna & Western Coal Company, a corporation organized under the laws of the State of New Jersey, with a capital stock of $6,800,000.00, consisting of 136,000 shares, and I hereby agree to pay for such stock in cash, and hereby authorize and direct A. D. Chambers, as Treasurer of the Delaware, Lackawanna & Western Railroad Company, to pay to the Treasurer of said Delaware, Lackawanna and Western Coal Company the sum of $ being one-half of the amount of the dividend of fifty per cent. due me upon the stock held by me in the Delaware, Lackawanna & Western Railroad Company on July 1st, 1909. Such sum is in full payment of such subscription and I hereby acknowledge receipt of one-half of such dividend of fifty per cent. and release and discharge the Delaware, Lackawanna & Western Railroad Company of all claims and demands therefor.

32

33

Dated, 1909.

Name of Subscriber	Post-Office Address	No. Shares Subscribed

Witness to signature.

34 All of the stockholders of the Railroad Company subscribed to stock of the Coal Company, with the exception of those named in this list, and there was an aggregate of 2,249 shares, or owners of that amount of stock who didn't subscribe to the stock of the Coal Company.

Following is a list of stockholders who did not subscribe to the stock of the Coal Company, as referred to by the witness.

Stockholders of the Delaware, Lackawanna & Western Railroad Company who did not subscribe to stock of Delaware, Lackawanna & Western Coal Company:

	Harriet N. Andrews,	60
35	Barnes & Mackey,	1
	Amos Bartlett, Chas. G. Washburn & Frank Bulkeley, T'tees, under 11th clause of will of H. N. Slater,	360
	Do T'tees under 12th clause, etc.,	180
	Do " " 13th " "	180
	Do " for the children of Caroline Slater Washburn,	180
	Do T'tees for Mabel Hunt Slater,	100
	Helen C. Bostwick,	200
	Phebe E. Burns,	2
	Butler, Sarah M. (Mrs.),	84
	William H. Childs,	10
36	Corwith, Sarah H.,	50
	Jane W. Dwight,	10
	Jules A. Ephraim,	3
	William Ferguson,	2
	James Freeland, Dec.,	2
	Geo. W. Gail, Jr., Ernst Schmeisser & John Hinricks, T'tees, u/w Georg Wilhelm Gail, Dec.,	66
	James Grier,	9
	Mary S. Harris,	10
	Henry Hendrickson,	15
	Edward C. Herrick,	4

POOR

C. I. Hudson & Co.,	20	37
William Magnus,	1	
J. H. Mondon,	6	
Caroline B. Powers,	300	
Alice W. Runyon, Dec.,	19	
Fredk. R., Richard D., Philip S., Herbert M., Sears, T'tees, u/w Frederick R. Sears for Albertina H. Sears of Nahant,	60	
Do T'tees for Marian S. Lovering,	90	
Do " " Tina S. Dabney,	90	
Josephine Judson Shafer,	17	
Mary T. Spencer,	40	
William M. Swain,	33	
Mary J. Taber,	40	38
Sarah Walter Tilden,	1	
Sarah Walter Tilden as Genl. Guardian Marion Eliza Tilden,	1	
C. F. Wells, Jr., & Co.,	3	

Q. With the exception of the list which you put in the record, they all subscribed in pursuance of that circular sent out by the Railroad Company?

A. Yes, sir.

Q. Signed the form of subscription which you had sent out?

A. Yes, sir, prior to the second day of August all moneys received for subscriptions to stock of the Coal Company, 39
were turned over by Mr. Chambers to the Treasurer of the Coal Company, and prior to that date the Coal Company paid to the Railroad Company approximately two and one-half million dollars for the coal of the Railroad Company, which it purchased on that day, being the coal which had been mined and which was in transit or on storage at various points.

Q. Taking over the title to the coal as of that day?

A. The second day of August. Since that time the Coal Company has continuously engaged in the business of selling the coal which it has purchased under that contract.

OPY

40 Q. Do you remember, Mr. Jenney, why, subsequent to the formation of the Coal Company, the Railroad Company continued to purchase coal from independent collieries?

A. Well, as to certain coal of independent operators, there were written contracts of long standing, under the terms of which the Railroad Company was obligated to purchase that coal, so that so far as that coal was concerned, unless those contracts were assignable, the Railroad Company would have to continue to purchase it. Then another thing, the Railroad Company used a lot of coal for its own engines, its own purposes, and I think as a practical matter we found it convenient to use for our own purposes a portion of the small sizes of coal that we purchased.

41 I don't think that anybody connected with either the Railroad Company or the Coal Company gave very much consideration to the question of whether or not the Railroad Company should continue to purchase coal as it had in the past and sell it to the Coal Company, or whether we should discontinue that practice and permit or request the Coal Company to purchase coal direct.

Q. You treated it as a matter of indifference. You have stated, Mr. Jenney, that the name of the Coal Company, the contractee, was left out of the original draft?

A. That was my recollection.

Q. Do you remember any particular reason for that?

A. I don't think so, except at that time the Coal Company

42 was not formed.

Q. Had any efforts been made before the formation of the Coal Company to sell the coal to other parties, to find other purchasers than the Coal Company?

A. No, there wasn't any, Mr. Coudert, there wasn't anybody in existence, so far as any of our people knew, in a position to sell our coal. You see the coal was sold everywhere throughout the country this side of the Missouri River and we had a very large organization all over the country engaged in the selling of that coal and there was no corporation or individual that we knew that was in a position to undertake the sale of that coal forthwith.

POOR

Q. You had, prior to the organization of the Coal Company, a complete sales department of the Railroad Company? 43

A. We did, sir.

Q. You had, prior to the organization of the Coal Company, a complete sales department of the Railroad Company?

A. Yes, sir.

Q. Wasn't that maintained more or less separately, I mean a *de facto* organization with a head and subordinates?

A. Well, it was, you might call it a separate organization.

Q. You might explain about that, just what that sales department consisted of, who were the officers, etc.?

A. We always had a Coal Department, the books of which and what not, were kept separate from the Railroad. Now, the Coal Department included the mining of coal and the 44 sale of coal. The sales organization was not separate and apart from the coal department; the mining. The coal was sold in the old days under contract with individuals who sold the coal.

Q. You sold direct to the individuals in the old days?

A. Holden & Sons were the men who disposed of the coal, but when Mr. Truesdale became President of the Company, he gradually formed this sales organization, so that the Company would sell its coal direct and thereby do away with the middleman's profit, and we had employees working for the Company on a salary basis, at various points, who sold the coal, and we also had various contracts with agents who sold the coal on various terms, conditions, commissions and 45 what not; salaries, different terms, and that sales organization was constituted of men who had been for some years engaged in that work and were experienced and capable men, acquainted with the business of the Company and with the particular conditions and what not.

Q. Could you either now, from recollection, or later, looking at the records, give me the name or names of the head men in the sales department in 1909?

A. There is a list on the first day of April, 1909, and here is the official list of the Coal Company, and here is one I prepared, a list of the employees of the Delaware, Lacka-

COPY

46 wanna and Western Coal Company, the names of all such employees except those engaged in manual labor and I have put on the list, opposite each name, the words "New Man" of each man who was not previously in the employ of the Railroad Company before the Coal Company was formed.

APRIL 1st, 1909.

COAL DEPARTMENT.

E. E. Loomis, Vice-President, New York, N. Y.

SALES.

J. H. Abbott, Sales Agent, Tide Water, 90 West St., N. Y.

S. G. Memory, Line Sales Agent, 90 West St., N. Y.

47 H. A. Smith, Asst. Line Sales Agent, Scranton, Pa.

D. N. Rothermel, Salesman, 37 Woybosset Street, Providence, R. I.

D. E. Russell, General Northern Sales Agent, Ft. Erie St., Buffalo, N. Y.; 620 W. Fayette St., Syracuse, N. Y.; Oswego, N. Y.

J. J. Town, Sales Agent, Martin Building, Utica, N. Y.

W. B. Palmer, Sales Agent, Hammond Building, Detroit, Mich.

E. L. Hedstrom & Co., Sales Agents, Marquette Bldg., Chicago, Ill.

S. C. Schenck, Sales Agent, Old Colony Bldg., Chicago, Ill.; 408 Superior St., Toledo, O.

48 North Western Fuel Co., Sales Agents, Fisher Building, Chicago, Ill.; St. Paul, Minn.; Minneapolis, Minn.; Milwaukee, Wis.; Duluth, Minn.; Superior, Wis.

Milwaukee Western Fuel Co., Sales Agents, Milwaukee, Wis.

Ogdensburg Coal & Towing Co., Sales Agents, Montreal, Canada.

E. J. Johnson, Supt. Coal Docks, Hoboken, N. J.

POOR C

THE DELAWARE, LACKAWANNA & WESTERN COAL CO. (Aug., 1913). 49

Organization shown on account of contract relations with the D., L. & W. R. R. Co. for the purchase and sale of Anthracite Coal mined by the Railroad Company:

E. E. Loomis, President, 90 West Street, New York.
D. E. Russell, Vice-Pres. and General Sales Agent, 919-927 White Bldg., Buffalo, N. Y.
J. J. A. Owens, Secretary and Treas., 90 West St., New York.
Samuel Kerr, Asst. Secretary and Asst. Treasurer, 90 West St., New York.
William S. Jenney, General Counsel, 90 West St., New York. 50
J. F. Bermingham, Auditor, 90 West St., New York.
Wm. L. Starck, Traveling Auditor, 90 West St., New York.
J. H. Abbott, Sales Agent, Tide Water, 90 West St., New York.
S. G. Memory, Line Sales Agent, Broad & Market Streets, Newark, N. J.
H. A. Smith, Asst. Line Sales Agent, Scranton, Pa.
D. N. Rothermel, Salesman, 7 Halsey St., Providence, R. I.
E. H. Read, Sales Agent, 919-927 White Bldg., Buffalo, N. Y. 51
G. W. McEathron, Sales Agent, 1620 W. Fayette St., Syracuse, N. Y.
J. J. Town, Sales Agent, Martin Bldg., Utica, N. Y.
W. B. Palmer, Sales Agent, Penobscot Bldg., Detroit, Mich.
E. L. Hedstrom & Co., Sales Agents, Marquette Bldg., Chicago, Ill.
D. D. Schenck, Sales Agent, Old Colony Bldg., Chicago, Ill.

PY

52 S. C. Schenck, Sales Agent, 408 Superior Street, Toledo, O.

North Western Fuel Co., Sales Agents, St. Paul, Minn.; Minneapolis, Minn.; Duluth, Minn.; Superior, Wis.

Milwaukee Western Fuel Co., Sales Agents, Milwaukee, Wis.

Ogdensburg Coal & Towing Co., Sales Agents, Montreal, Canada.

G. W. Burke, Shipping Agent, Foot of Erie Street, Buffalo, N. Y.

DELAWARE, LACKAWANNA AND WESTERN COAL CO.

53 RECORD OF EMPLOYEES, 1913.

Line Sales Agent:

General

A. A. Weckner, Chief Clerk.

J. C. Cook, Bookkeeper (New Man).

H. M. Ehlers, Stenographer.

Scranton Office:

A. H. Pace, Clerk.

H. J. Mais, Stenographer (New Man).

Newark Pockets:

A. W. Decker, Superintendent.

54 A. C. Hotaling, Bookkeeper.

L. B. Davies, Weighmaster.

C. H. Baily, Cashier.

T. H. Banks, Foreman.

R. G. Zeliff, Stenographer (New Man).

Harrison Pockets:

C. Brown, Weighmaster.

W. McKenzie, Foreman.

Paterson Pockets:

W. J. Bridges, Superintendent.

55

J. Harrison, Weighmaster.
J. O'Brien, Weighmaster (New Man).

Bloomfield Pockets:
A. H. Holmes, Superintendent.
D. L. Conroy, Weighmaster (New Man).

Summit Pockets:
E. L. Baxter, Weighmaster.

Montclair Pockets:
Wm. L. Feeney, Weighmaster (New Man).

Utica Agency:
J. C. Waldron, Salesman.
W. E. James, Bookkeeper. 56
G. S. Davies, Clerk.
W. F. Hague, Stenographer.

Syracuse Agency:
H. W. Marshall, Salesman.
W. H. Behan, Chief Clerk.
W. W. Wood, Bookkeeper.
F. H. Floring, Clerk and Stenographer.
Wm. B. Mulane, Clerk (New Man).
M. E. Monahan, Superintendent.
J. D. Monahan, Clerk.
E. H. Tarnow, Clerk.
J. T. Monahan, Clerk. 57
H. W. Arthur, Clerk (New Man).
R. M. Skeele, Superintendent (New Man).
C. H. Eddy, Clerk.
P. F. Gorman, Foreman.
E. Quigley, Foreman.
H. Cook, Tally Clerk (New Man).

Buffalo Agency:

Sales Office:
W. A. Martin, Salesman.
W. E. Auld, Chief Clerk.

58 E. T. Halland, Bookkeeper (New Man).
W. D. Reimer, Clerk (New Man).

General:
N. A. Eckerson, Chief Clerk.
E. A. Struger, Stenographer (New Man).

Erie St. Office:
F. J. Donovan, Accountant.
G. P. Cannon, Clerk.
H. S. Gage, Clerk (New Man).

East Buffalo:
A. A. Laux, Chief Clerk.
R. L. Joyce, Clerk.
59 J. M. Koch, Clerk (New Man).
H. O. Fuller, Clerk.
H. Nowak, Clerk (New Man).

Detroit Agency:
H. J. Taylor, Salesman.
F. L. Treat, Bookkeeper (New Man).

Auditor's Office:
C. B. Greene, Shipping Clerk.
J. R. Smith, Bookkeeper.
P. L. Thomsen, Accountant (New Man).
E. C. Townley, Clerk.
C. E. Van Sise, Clerk (New Man).
60 Wm. E. DeVine, Clerk (New Man).
P. T. Shearer, Clerk (New Man).
C. A. Currie, Clerk.
J. M. Hawley, Clerk (New Man).
A. J. Stager, Clerk (New Man).
F. O. Parsons, Clerk (New Man).
C. A. Scheller, Stenographer (New Man).
Wm. L. Starck, Traveling Auditor (New Man).
H. McCabe, Accountant (New Man).
Sec'y and Treasurer, J. J. A. Owens, formerly Cashier D. L. & W. R. R.

61

Asst. Sec'y and Treasurer, Samuel Kerr, formerly Clerk Coal Dept., D. L. & W. R. R.
Stenographer, A. W. Burghbacker (New Man).

DELAWARE, LACKAWANNA & WESTERN COAL CO.

RECORD OF EMPLOYEES, AUG., 1909.

Line Sales Agent:

General:
C. L. Corby, Chief Clerk (Out).
A. A. Weckner, Bookkeeper.
G. Hallett, Stenographer (Out).

62

Scranton Office:
A. H. Pace, Clerk.
H. S. Law, Stenographer (Out).

Newark Pockets:
A. W. Decker, Superintendent.
A. C. Hotaling, Bookkeeper.
L. B. Davis, Weighmaster.
H. M. Ehlers, Stenographer.
T. H. Banks, Foreman.

Paterson Pockets:
W. J. Bridges, Superintendent.
J. Harrison, Weighmaster.
W. J. Barr, Weighmaster.

63

Harrison Pockets:
C. Brown, Weighmaster.
W. McKenzie, Foreman.

Bloomfield Pockets:
A. H. Holmes, Jr., Superintendent.
C. N. Bailey, Weighmaster.

Summit Pockets:
E. L. Baxter, Weighmaster.

64 Utica Agency:
W. E. James, Bookkeeper.
J. G. Waldron, Salesman.
G. S. Davis, Clerk.
W. F. Hague, Stenographer.

Syracuse Agency:
H. W. Marshall, Salesman.
W. H. Behan, Clerk.
M. E. Monahan, Superintendent.
W. W. Wood, Bookkeeper.
E. H. Tarnow, Clerk.
C. F. Lynch, Stenographer (Out).
T. J. Monahan, Clerk.
65 F. H. Floring, Clerk.
T. F. Gorman, Foreman.
C. C. Darrene, Clerk (Out).
Thos. Shanahan, Clerk (out).
Wm. Behan, Tallyman (out).
C. H. Eddy, Clerk.
E. Quigley, Foreman.
C. H. Griggs, Clerk (out).

Buffalo Agency:

Sales Office:
W. A. Martin, Salesman.
F. E. Provost, Clerk (out).
66 W. E. Auld, Stenographer.

Erie St. & Gen'l Office:
N. G. Eckerson, Chief Clerk.
F. J. Donovan, Accountant.
G. P. Cannon, Clerk.
J. T. Baldwin, Stenographer (out).
W. F. Sharp, Clerk (out).

East Buffalo Office:
A. A. Laux, Chief Clerk.
F. E. Boldt, Clerk (out).

H. R. Robertson, Clerk (out). 67
R. L. Joyce, Clerk.
E. M. Dawson, Clerk (out).
Urban Gerrie, Clerk (out).

Detroit Agency:
H. J. Taylor, Salesman.
Wm. Banks, Bookkeeper (out).
E. M. Anderson, Stenographer (out).

Secretary and Treasurer's Office:
S. Kerr, Clerk.
D. L. Snell, Stenographer (out).

Auditor's Office:
C. B. Greene, Shipping Clerk. 68
J. R. Smith, Bookkeeper.
E. C. Townley, Clerk.
C. Curry, Clerk.
L. D. Mapes, Accountant (out).

Q. Then the Coal Company took over the whole sales department of the Railroad Company and conducted it itself?

A. After this formation, practically all of the men engaged in the work of selling coal, there were a few exceptions, practically all of them left the employ of the Railroad Company and became in the employ of the Coal Company on the second day of August, 1909, and have since 69
been employed by the Coal Company.

Q. Didn't they have the same offices?

A. No, the Coal Company acquired new offices.

Q. Acquired new offices?

A. Yes, sir.

Q. Where were they?

A. In this building.

Q. Where theretofore?

A. Well, the coal sales department was a part of the coal department offices on the floor above this and after

70 the formation of the Coal Company they had to have separate offices for a Secretary and Treasurer and those offices were here above and certain of the other offices connected with the coal department were set apart for the coal companies' exclusive use.

Q. The sales business was conducted, I presume, as it had been theretofore?

A. Yes, except that Mr. Russell assumed the office of Vice-President and General Sales Agent, I think his title was, of the Coal Company, and I think he had more exclusive jurisdiction than he had theretofore; I think his authority in the Coal Company was very much larger than it had been under the Railroad Company.

71 Q. Was any notice sent out to the employees in the sales department of the change, informing them that they were employees of the new company, I mean any written notice?

A. That I could not tell you, Mr. Coudert.

Q. You might be good enough to look into that and tell me if such notice was sent.

A. I had to advise the Company of the withdrawal of free transportation for these employees and we had quite a little friction in some cases with that.

Q. No further passes were issued to the sales department?

A. No, sir, no employee of the Coal Company ever had
72 any free transportation.

Q. And since the organization of the Coal Company you haven't furnished any passes?

A. No, sir.

Q. Has any question arisen about that?

A. Of course, if an employee was receiving a salary of a thousand dollars a year and free transportation and didn't get the transportation, that made a difference, but no interstate transportation was ever given to any Coal Company employee. Not to my knowledge or with my assent.

Q. Will you kindly look into that and I won't follow that if you will give me the facts about it.

A. Yes, sir. 73

Q. Was any intrastate free transportation given?

A. That may have been done. Any intrastate transportation that we were able to legally furnish I would have recommended. Whether any of that sort was given or not I cannot say at this time. We couldn't give any now because the intrastate is the same as interstate.

Q. Will you kindly look that up?

A. I will find out whether any intrastate transportation was given to any Coal Company employee.

Q. And with a possible exception of intrastate transportation, no compensation was made to the employees of the Coal Company in the sales department for the loss of passes? 74

A. That I couldn't say. It may have been in response to the efforts of some of the employees who were employed by the Coal Company; the officers of the Coal Company may have given them increased compensation or what not; that I do not know anything about. I do not think, Mr. Coudert, that any increased compensation was given to them because of the transportation being taken away from them, if that is what you are getting at. Of course, the work of these men in the sales department, a great many of them were changed after the Coal Company was formed and the compensation was rearranged with respect to a great many of those who before had been working for the Railroad Company. 75

Q. Did either the Railroad Company or the Coal Company send out any formal notice to the customers of the Company with regard to the change and reorganization?

A. Yes, sir.

Q. Could you produce it or a copy of it?

A. Yes, sir.

Q. You spoke of the proposed contract presented to the Board of Directors of the Delaware, Lackawanna and Western Railroad Company and the expectation that it would be entered into by the Coal Company, on what did you base that expectation?

76 A. We were already engaged, Mr. Stetson and I, already engaged in the formation of that Coal Company. It was entirely understood that the Coal Company was to be formed and that the only thing that would prevent it would be the failure on the part of the stockholders to subscribe to the stock.

Q. The stockholders of the Delaware, Lackawanna and Western Railroad Company?

A. If the stockholders did not like the organization of the Coal Company, didn't want to subscribe to the stock, then there would have been a failure in the formation of the Coal Company. It was anticipated that that would be done.

Q. You had assurance from some of the stockholders at
77 least, as to their satisfaction?

A. Not a great many; I think eight of our Board were present at the time this resolution was adopted.

Q. They represented a majority of the stock?

A. No, I can't tell you what proportion of the Delaware, Lackawanna and Western Railroad Company stock is owned by the Board of Directors, but it is a small proportion.

Q. Whom did Mr. Stetson represent?

A. Mr. Stetson represented, so far as any one could represent, the Coal Company, in other words, his bill was subsequently paid by the Coal Company for his services and his assistant, Mr. Gardner, was on the Board of the Coal Company, directed its organization when this resolution was
78 adopted and remained on the Board for sometime after the organization.

Q. Did Stetson represent any persons who were stockholders interested in the Railroad Company?

A. Mr. Stetson was retained by me at the suggestion of two or three of our people to arrange for the organization of the Coal Company.

Q. I understand that, Mr. Jenney, but you knew as a matter of fact, that Mr. Stetson represented J. P. Morgan & Company?

A. J. P. Morgan & Company had no particular interest in the D. L. & W. Company.

79

Q. They had no interest as stockholders?

A. You can tell from the list here, but I don't think J. P. Morgan or any of their members were stockholders.

Q. Did not Mr. Stetson at that time represent Mr. Baker or others who had large interests?

A. I think not. I don't think Mr. Stetson was counsel for Mr. Baker.

Q. So that you retained Mr. Stetson, a lawyer, having as far as you knew, no connection whatever with any of the persons interested in the Delaware, Lackawanna and Western Railroad Company?

A. That is correct. In fact, because he was suggested by two or three people as being a man of experience in the formation of companies, in matters of this sort and they would 80 like to have him supervise it.

Q. And do you remember who were the people who suggested to you the selection of Mr. Stetson as the proper counsel to assist you?

A. My recollection is that he was suggested at the same meeting of the Executive Committee of the Railroad Company, which I attended, and my recollection is that the individual who suggested him was Mr. Twombly.

Q. And Mr. Twombly represented the Vanderbilt interests?

A. He did during his lifetime.

Q. Was the formation of the Coal Company the subject of correspondence among persons connected with the Rail- 81 road Company, other than the conferences you have spoken of?

A. I don't know of any letters being written, except between counsel.

Q. Between Mr. Stetson and yourself?

A. I had one or two letters from Mr. Johnson in connection with the matter.

Q. So that the whole matter was really done by your office and by your colleagues, Mr. Stetson and Mr. Johnson?

82 A. It was done by counsel, either myself or employed by me, retained by me.

Q. Well, after the formation of the Coal Company, did you remain as its counsel?

A. No, I was not employed as counsel for the Coal Company until sometime after its formation. I couldn't tell you, without refreshing my recollection, but I should say two or three months after the formation, before I received any compensation as counsel.

Q. In that intermediate period, did Mr. Stetson remain?

A. The direct man was Mr. Gardner. He attended the Board meetings and looked after their resolutions and all that sort of thing.

83 Q. Why was the Coal Company incorporated with so large a capital? Why was so large a capital needed; it has no plant, has it?

A. Well, it had, as I recall it, five or six millions of capital; something like that.

Q. Six million and something?

A. To start off we had to pay—

Mr. Kingsbury: The amount was $6,800,000.

A. Upwards of six million; they had to pay for the coal to start with, that was short of three million and that was paid in cash to the Railroad Company and that reduced the amount of their cash by 50 per cent.

Q. Of course that came right back?

84 A. What do you mean?

Q. As soon as they sold the coal?

A. As soon as they sold the coal, yes, but they had to pay it out in cash, pay the Railroad Company in cash when they took that coal, and then they wanted sufficient capital, cash sufficient to enable them to do business, and I believe that capitalization was not out of the way. I think that is a proper amount of capitalization.

Q. Would you be good enough to give us any other reports. You have furnished me with the second annual report of the Coal Company.

A. I had prepared a statement of the operation of the Coal Company for the year ending December 31st, 1912. 85

Q. 1912, that has not yet been printed, I take it? I want one for December 31st, 1911.

A. I don't think that we printed the annual report for 1912, but it was sent to the stockholders.

Q. I have in my hand the Second Annual Report of the Coal Company, there must have been a first?

A. That is the third, I should say.

Q. Will you furnish me at your convenience, the First Annual Report, also find out if you had a third report?

A. No, I don't think, my recollection is, Mr. Coudert, there was no regular statement published after that one.

Q. I note among the assets of the Coal Company, some 86 lands and trestles, but the bulk of the trestles in the coal vicinity remained in the Railroad Company?

A. The Coal Company, since its organization, has been progressing, Mr. Coudert. The Coal Company isn't confined to the sale of the coal of the Railroad Company solely. The Coal Company has expended quite a lot of money in the purchase of property and various things on its own account. It has a property at Toronto, which it has acquired since its organization, in which it has invested, I should say, a quarter of a million dollars. It has a property at Syracuse in which it has invested a hundred and twenty-five or a hundred and fifty thousand dollars.

Q. What kind of property? 87

A. Retail coal properties. Land, buildings and trestles and what not, and the Coal Company is in many respects investing money in the acquisition of properties and what not and facilities for the sale of the coal.

Q. I have here a long list which I also think you furnished, of the terminal and trestle facilities of the Delaware, Lackawanna and Western Railroad. Do I understand they are still in the possession of the Railroad Company and are leased to the Coal Company?

A. Yes, sir. All or practically all of the trestles and

88 what not of the Railroad Company, at the time of the organization of the Coal Company were leased by the Railroad Company to the Coal Company, on a basis of five per cent. of the value of the property per year and all of the leases from the Railroad Company to individuals of property used for the sale of coal, trestles and what not, all of those were turned over to the Coal Company absolutely.

List of Trestles, etc., offered and received in evidence and marked Exhibit P2.

Q. So that the Coal Company and the Railroad Company together could have as much control through their facilities of all the coal along the lines as the Railroad
89 Company had had theretofore.

A. I think, as I say, the Coal Company has been progressing, and I think the Coal Company today has superior facilities for the disposition of coal than the Railroad Company had before.

Q. No independent colliery or collieries have anything like the facilities the Railroad and Coal Company had along the Delaware and Lackawanna lines, have they?

A. I can't answer that, Mr. Coudert, I don't understand what you mean.

Q. I mean no other collieries than the Delaware, Lackawanna and Western have the same facilities, in other words, none of the independent collieries have the facilities for
90 shipping, storage and manipulating the coal that your Railroad Company and Coal Company had?

A. There is no independent operator compared with the Railroad Company as producer or with the Delaware, Lackawanna and Western Coal Company as purchaser, none what you would call independent operators, have any need for any facilities of the sort. So far as any independent operator of coal desiring facilities, the Company would be delighted to furnish them, with the transportation of the coal, along the line of the Railroad Company, and it would be to the interest of the Railroad Company to have any

independent trestles or sale facilities of the independent companies located along its line. 91

Q. The Company does everything it can to get coal tonnage, to induce shipping along its line?

A. Correct.

Q. The Coal Company controls something like ninety per cent. of the coal along its line?

A. You mean, does not the Delaware, Lackawanna and Western Coal Company sell ninety per cent. of the coal which is sold along the line of the D., L. and W.?

Q. Yes.

A. I should say not.

Q. Can you say roughly what it is?

A. I could only give you an approximate guess on it. 92

Q. If you will, will you get that for me?

A. With the exception, Mr. Coudert, of several particular points along the Pocono Mountains, there is not along the line of the D., L. and W. Railroad a point where there is no other coal sold than our coal, than the coal produced by the Railroad, take all the points, New York to Buffalo, Oswego, and Syracuse, and almost every point reached by our road, where our coal is sold, is also reached by other railroads where the coal of other coal companies is sold. My guess would be that not more than three per cent. of the coal sold by the Coal Company is sold at points where there is no active competition with the coal of other companies.

Q. Either railroads or independent? 93

A. Yes, sir.

Q. Does the coal of the Delaware, Lackawanna and Western Coal Company go over your line?

A. It has to start with our line.

Q. That is, it has to start from the collieries?

A. All of the coal either mined or purchased by the Railroad Company, and then sold to the Coal Company is sold at the mouth of the collieries, so that it has to start on the railroad of the Delaware, Lackawanna and Western Railroad Company. I don't think that the Coal Company purchased any coal which starts except on the line of the

94 Railroad Company. I may be in error about that, if I am I will correct it.

Q. As counsel for the Coal Company and generally familiar with the affairs, do you know whether the Coal Company at any time endeavored to make any arrangement looking to the shipment of its coal over other lines.

A. Mr. Coudert, I would not hesitate to say that if the Coal Company could get a more profitable market at a point which was not reached by the lines of the Delaware, Lackawanna and Western Railroad, and thereby get more for its coal it would ship that way, but the most profitable market from the standpoint of the Coal Company for the disposition of its coal is the Western market. With the
95 exception of a small proportion of the coal sold at New York, and with the exception of the coal sold at Syracuse, Oswego and various points along the line, the largest proportion of the coal is sold in the West. It is shipped over the Great Lakes from May to December by boat from Buffalo, and that is the coal for which the Coal Company gets the best price by shipping it during the Summer season when the rates are reasonable, water transportation, the profits are greater than from the sale of coal anywhere else. The profits from the sale of coal in New England are not equal to the sale of coal in the Western market and the Coal Company is engaged in business for the profit, and therefore it sells its coal at the point where it gets the
96 best price for it.

Q. Why is it that the Western market is so much better?

A. Well, sir, the farther you are removed from the anthracite region the more the coal is worth.

Q. Because of the freight rate?

A. Because of the expense of transportation, and there is constantly an increasing demand for anthracite coal in the West, as it increases in population and wealth.

Q. It is more valuable to the Railroad Company to transport it?

A. Of course, the more demand the more you get for it.

Q. You have given us the names of the officers and Di-

rectors of the Coal Company at its formation, were all these 97
gentlemen connected with the Railroad Company?

A. The Board of Directors?

Q. You gave the original Directors of the Delaware, Lackawanna and Western Coal Company, Mr. George F. Baker, I will ask about them separately. Mr. Loomis was connected with the Railroad Company?

A. As Vice-President.

Q. In the Coal Company he became what?

A. President.

Q. Mr. J. J. Owens was connected with the Railroad Company?

A. He was employed in the Treasurer's office of the Railroad Company and he resigned from that, and was 98
made Secretary and Treasurer of the Coal Company.

Q. Mr. Daniel E. Russell?

A. He was General Sales Manager of the Coal Department of the Railroad Company.

Q. He went over in the Coal Company?

A. He was made Vice-President in charge of the sales of the Coal Company.

Q. Mr. Wm. H. Truesdale?

A. He was President of the Railroad Company.

Q. Mr. Edward E. Loomis?

A. Vice-President.

Q. Mr. George H. Gardner, was he connected with the Railroad Co.? 99

A. No, he was Mr. Stetson's assistant.

Q. Mr. Stetson's assistant and brought in at the time you retained Mr. Stetson?

A. He remained on the Board for a year or so.

Q. Has he gone off the Board?

A. Yes, he resigned and Mr. Blumenthal, George Blumenthal was elected in his place.

Q. Is Blumenthal connected with the Railroad Company?

A. He may be a stockholder in the Railroad Company.

Q. You don't remember whether he was a stockholder in

100 the Railroad Company before the formation of the Coal Company?

A. I don't know, but I think he was, he had been a stockholder for some time and my recollection is his holding of stock in the Coal Company is larger proportionately than in the Railroad Company.

Q. He is not on the Board of the Railroad Company?

A. He has never been a Director or connected in any way with the Railroad Company.

Q. Is Mr. James A. Stillman an officer or Director of the Railroad Company?

A. No.

Q. He was merely a stockholder?

101 A. I don't know that he held any stock?

Q. He appears here on your list, Stillman, James.

A. That is his father.

Q. Mr. James A. Stillman who became one of the original Directors of the Delaware, Lackawanna & Western Coal Company was a son of Mr. James Stillman who appears here as a large stock holder?

A. Yes.

Q. And Mr. Percy R. Pyne, 2nd, was a relative of Mr. Percy Pyne?

A. A nephew I think.

Q. He was a Director of the Railroad Company?

A. His father was a Director, M. Taylor Pyne.

102 Q. Mr. Henry R. Taylor, was he connected with the Railroad Company in any way?

A. No, he was a son of Mr. Henry A. Taylor, who was a Director of the Railroad Company.

Q. Mr. George F. Baker, Jr.?

A. He was also a son of Mr. Baker, one of the Directors of the Railroad. None of those men were stockholders in the Railroad.

Q. In the Coal Company?

A. In the Railroad Company at the time, as I recall it.

Q. They had to have some stock in the Coal Company, to qualify as Directors?

A. They all became stockholders of the Coal Company. 103

Q. Do you know, Mr. Jenney, how these gentlemen were selected, were they selected by you as proper persons to be Directors of the Coal Company?

A. Mr. Percy R. Pyne was one of the incorporators and he transferred a share of stock to the various individuals (he acted as incorporator) at the suggestion of Mr. Loomis and myself, as being men who would be satisfactory as a Board of Directors from the standpoint of the men who were asked to subscribe for the stock, in other words, the stockholders of the Railroad Company. We wanted to have a representative body of men whom the stockholders would think would be responsible and competent men.

Q. Your idea was to make the change just as agreeable as 104
possible to the stockholders of the Railroad Company?

A. Satisfactory to the stockholders, yes, and to start off with the sons of men who had been selected by the stockholders as the Board for the Railroad Company was we thought a very suitable thing to do, and would meet with the approval of the stockholders.

Q. Have you a list of the stockholders of the Delaware, Lackawanna & Western Railroad Company?

A. I wrote a letter to Mr. McReynolds.

Counsel for the petitioner offers in evidence a list of stockholders of the Delaware, Lackawanna and Western Railroad Company under date of Jan. 10, 1913, and same is marked, "Petitioner's Exhibit P3." 105
Counsel for petitioner also offers in evidence a list of stockholders of the Delaware, Lackawanna and Western Coal Company under date of December 31st, 1912, and same is marked, "Petitioner's Exhibit P4."

Q. Mr. Jenney, in drawing up the contract with the Coal Company on what basis did you estimate the price to be paid for the coal, you have a tabulation of prices there, on what basis of profit to the Coal Company?

A. Do you mean the sale by the Railroad Company to the Coal Company of its coal, or the prices for the future sale of the coal?

106 Q. I would like to know about both, both the present and future coal?

A. Well, the price for its coal on hand was simply thought to be a fair basis as between the two companies, fairly representing the value of that coal under all the circumstances of the trade. Now, the price at which the coal was to be sold, namely, sixty-five per cent., was the standing offered price for the sale of coal by independents to the Railroad Company, and existed for a great many years, and which the United States Government, through various attorneys, thought was the form of a contract which gave the independents a great deal more for their coal than they would have gotten except for the desire of the Rail-
107 road Company to get a monopoly of the coal. In other words, it was the uniform method of selling coal, and if the Coal Company could purchase coal on that basis and do business at a profit it would be a very satisfactory arrangement because it would be in line with what had been the history of the sales of coal to the Railroad Company by independents, and it would not make a different form of contract than that which was provided generally up there; and if the Coal Company could make any money on that basis it would be a complete disputation of statements that had been made that that was a form of contract which was not made in good faith, wasn't a fair price to charge, a gratuity in order to control the market. Now,
108 we thought from the little figuring we did that our Coal Company ought to be able to make money, even paying sixty-five per cent., and from the standpoint of the Railroad Company that was a good price for the coal, and if we got that price for the coal we could never be criticised by the stockholders of the Railroad Company. Now, it wasn't at all assured when that contract was formed whether that would be a fair basis for the sale of coal or not, and for that reason the last two or three clauses of the contract were inserted in order that the rights of the two companies would be protected in that regard. There is a provision there for a Board of Arbitration, for cancella-

tion on six months' notice, that was for the protection of both in that respect. It was thought, and by me strongly advised, that if the Coal Company could profitably dispose of the coal on a basis of sixty-five per cent., that was very desirable. 109

Q. You thought there would be some proportion of profit, five or ten per cent., some figure?

A. We did some figuring on the basis of past sales by the Coal Company, the prices obtained in the past, for a period of six months in the different markets, and figured what we would have paid for such coal if we had bought it on a sixty-five per cent. basis, we figured up the expenses and thought the Coal Company could make from four to eight per cent. on that basis, it was very problematical. 110

Q. You knew what the freight rate would be, did you put that in as a fixed factor?

A. Of course we did figure it in the past, but it was only approximated for the future.

Q. I notice that the contract provides that if the parties to the agreement have any matter in difference it shall be determined by arbitration. Has any such Board of Arbitration been chosen as yet?

A. We have had no arbitration, Mr. Coudert, but there are today several matters of difference between the two companies, and one of the matters of difference is the price which the Coal Company pays the Railroad Company for its coal. The Railroad Company has demanded more money from the Coal Company than it is at present paying, in a resolution adopted by the Board of Directors, which I have brought over here in response to your letter. 111

Q. Has anybody been appointed on this Board of Arbitration?

A. No, Mr. Truesdale has had various correspondence, I say various, I know he has addressed two or three letters to the Coal Company in connection with the demands for modification of this contract, and they are now under consideration between the two companies. There has also been some

112 question as to the value of the properties turned over by the Railroad Company to the Coal Company on a five per cent. valuation, and I have been having an independent expert valuing all of those properties with a view of correcting any error in them. Some question has arisen between the companies as to the amount of rental. I don't think that will be necessary.

Q. What did the Farmers' Loan & Trust Company have to do with this?

A. It was Trustee of most of the mortgages of the subordinate lines of the Railroad Company. The Farmers' Loan & Trust Company contains a number of men as its stockholders and managers who are also interested in the Rail-
113 road Company, and they thought they would be a proper party to arbitrate any differences.

Q. This contract would seem to place the Coal Company at the mercy of the Railroad Company; if the Railroad Company notified the Coal Company of the abrogation of the contract, what would the Coal Company have.

A. What would the Railroad Company do if the Coal Company notified it of the abrogation, they have the same right. So long as the contract is mutually beneficial it is fair to say that the contract will continue indefinitely. Suppose the government succeeds in this litigation and it is determined that this contract for any reason was illegal there would be a lot of complications regarding the stock if
114 there wasn't something like that in the contract.

Q. The Coal Company, if the contract was abrogated, as far as business is concerned, would have nothing?

A. No, they have a lot of facilities they have acquired since they were formed, and they are getting more all the time, they have a good business and a good capital, and it wouldn't put them out of business.

Q. Today they wouldn't have any coal but your coal?

A. Probably.

Q. If abrogated they wouldn't have any coal?

A. During the six months they could arrange from other sources.

Q. At the moment of the abrogation they would be coal- 115
less?

A. At the moment of abrogation they would be coalless, but they would have six months to run, and I think the Coal Company would have no difficulty in arranging to do business.

Q. They could go ahead and arrange for it?

A. Yes, it has had considerable retail trestles all along.

Q. Those retail trestles have come into existence since the Coal Company was formed?

A. Since the Coal Company was formed.

Q. With the exception of those retail trestles you mentioned, which recently came into existence, the company has nothing and would have to start in and build up? 116

A. The company would get coal there.

Q. You have put in evidence and testified to the fact that nearly all the stock of the Coal Company, with the exceptions you have noted, was held by stockholders of the Railroad Company?

A. At the time, there have been a great many changes since, of course.

Q. That list which you furnished the Attorney General indicates that there are some 1397 stockholders interested in both companies?

A. Well, now, I had that prepared as of today, Mr. Coudert, and I have before me a list of all the stockholders of the Delaware, Lackawanna & Western Coal Company, not 117
stockholders in the Delaware, Lackawanna & Western Railroad Company, under date of October 7th, 1913, a complete list of the stockholders of the Delaware, Lackawanna & Western Railroad Company not stockholders of the Delaware, Lackawanna & Western Coal Company.

Q. That changes?

A. Constantly changes in the two companies, one will retain the stock of the Coal Company and sell in the Railroad Company, and vice versa.

Q. You can't tell me approximately now what is the percentage of stockholders common to both companies?

118 A. It is a matter of computation from that, my guess would be that there is anywhere from ten to twenty per cent. difference today.

Q. If you say this is correct I will put it in?

A. They are correct, sir, there are 88,716 shares of stock of the Railroad Company the owners of which do not own any stock of the Coal Company. And there are 6,907 shares of stock in the Coal Company the owners of which have no stock in the Railroad Company.

Counsel for petitioner offers in evidence the first list referred to by the witness, and same is marked "Petitioner's Exhibit P5."

119 Counsel for petitioner also offers in evidence the second list referred to by the witness, and the same was marked "Petitioner's Exhibit P6."

Q. Can you now name from recollection, Mr. Jenney, the largest stockholders in each company?

A. No, I cannot now.

Q. In the first list you furnished me Mr. W. W. Astor appears as holding 1,553 shares of the Coal Company, that is the first list you furnished me?

A. Thirty-five individuals together own a majority of the stock of the Railroad Company, and eighteen per cent. of the Railroad Company's stock is owned by the men constituting its Board of Directors. In the Coal Company twenty-nine stockholders control the company and 2.42 per cent. 120 of the stock of the Coal Company is owned by the Directors of the Coal Company.

Q. Will you give me a list of these thirty-five?

A. I will prepare and furnish you with the list of the 35 stockholders who have a majority of the stock of the Railroad Company, and the 29 stockholders who hold the majority of the stock of the Coal Company.

Q. Mr. Jenney, you have examined those stock lists pretty carefully?

A. I have looked them over.

Q. Do you know whether any of that stock except the trustees' stock is held by dummies or persons holding it for others, who don't appear on the stock list? 121

A. I couldn't tell you as to that, Mr. Coudert, I can't say, but as a general thing there is always a few shares of stock probably in existence, a thousand shares held by brokers and what not, in the course of transfer; it is acquired by individuals and held in the name of the broker for a certain time, when they have it transferred to themselves; there is always more or less stock of that sort, but with that exception so far as I am informed, and I think my information is correct, no dummies appear in the list of stockholders of either company.

Q. Do you know whether any of the gentlemen whose names I read off to you own any stock except that which appears opposite their names? Mr. George F. Baker, James Stillman, F. W. & W. K. Vanderbilt, either John or William Rockefeller, Mr. Fahnestock, Mr. Pyne and Mr. William H. Moore? 122

A. There would be no way of absolutely knowing whether these gentlemen held any stock other than that which appears. There is absolutely no way of knowing except by asking them themselves, but my acquaintance of the stockholders and the different individuals leads me to believe that there is no considerable amount, at least held by these gentlemen, except that which appears in their own name, not for others, not any considerable amount. 123

Q. Are the stocks of both these companies listed and actively dealt in on the Stock Exchange?

A. The stock of the Railroad Company is listed on the Stock Exchange, but not actively dealt in, the Railroad stock as compared with the stock of some other corporations is not frequently dealt in.

Q. How about the Coal Company's stock?

A. The Coal Company is not listed on the Stock Exchange, and the sales of that stock are probably made on the curb. I want to state on the record that the Coal

124 Company on the tenth day of October, 1913, had 1,588 stockholders in all, of which 801 were women holding stock in their own right, or in trust for them, that the average stockholding is 83 shares.

At this point the hearing was adjourned until Monday, the 10th day of November, at the same place at eleven A. M.

The taking of testimony in the above entitled cause was continued, pursuant to adjournment, before Richard S. Wilson, Esquire, Examiner, at the offices of the Delaware,
125 Lackawanna and Western Railroad Company, 90 West Street, New York City, on Monday, the tenth day of November, 1913, at eleven A. M.

APPEARANCES:

FREDERIC R. COUDERT, Esquire, and HOWARD THAYER KINGSBURY, Esquire, for the United States of America.

WILBUR L, BALL, Esquire, for the Delaware, Lackawanna and Western Coal Company.

WILLIAM S. JENNEY, Esquire, and JOHN L. SEAGER, Esquire, for the Delaware, Lackawanna and Western Railroad Company.

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Mr. Coudert: I want to put in evidence the condensed general balance sheet of the Coal Company, dated December 31st, 1912, furnished by the Company, at the last session, which is as follows:

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CONDENSED GENERAL BALANCE SHEET.

Assets.	December 31st, 1912.
Land, Trestles, etc.	$157,341.04
Furniture and Fixtures	11,729.79
Coal on Hand	1,416,280.05
Due from Agents	4,317,351.36
Bills Receivable	434,306.40
Accts. Receivable (Sundry)	21,191.00
Cash on hand and in banks	8,191,017.93
Stock in Treasury	75,693.60
	$14,624,911.17

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Liabilities.	
Capital Stock (Issued)	$6,590,700.00
Accrued Rentals	37,783.34
Accounts Payable	3,168,776.23
Reserve (Depreciation & Insurance)	164,168.85
Past Due Dividends	332.50
Dividend payable January 15th, 1913	164,767.50
Surplus	4,498,382.75
	$14,624,911.17

Coal purchased August 1, 1909 to December 31st, 1912, 23,977,726 gross tons.

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The same was marked "Petitioner's Exhibit P8."

WILLIAM S. JENNEY, a witness previously sworn on behalf of the petitioner, testified as follows:

Direct examination (continued) by Mr. Coudert:

A. (witness makes the following statement): I have a list of the names and amount of holdings, both of the Coal Company and the Railroad Company, the first being 35 of the

130 largest stockholders of the Delaware, Lackawanna and Western Railroad Company; second a list of the stockholders of The Delaware, Lackawanna and Western Coal Company holding 1,000 shares. I assume the lists substantiate the information which I have received that 35 of the largest stockholders of the Delaware, Lackawanna and Western Railroad Company together own a majority of the capital stock, and that 29 of the largest owners of shares of stock of the Coal Company own a majority of stock of the Coal Company.

Copy of first list referred to by the witness:

"November 10, 1913.

131 DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Thirty-Five Largest Stockholders.

Astor, Wm. Waldorf	7,141	Manning, John S.	2,985
Baker, Geo. F.	55,123	Moore, William H.	7,705
Blair, C. Ledyard	4,954	Moulton, Catharine T.	4,621
Geo. Blumenthal	4,644	Mumford, Thos. J.	5,200
Brooks, Josephine	7,533	Mutual Life Ins. Co.	10,005
Central Trust Co., Ttee.	6,683	Pyne, Maud Howland	5,811
Continental Ins. Co.	4,800	Do Moses Taylor	14,323
Edwards, Daniel	3,450	Russell, Archibald D.	2,530
Eno, Amos F.	13,200	Sanford, Stephen	4,130
132 Fahnestock, H. C.	4,350	Talmage, John F.	6,200
Fahnestock & Co.	14,160	Taylor, Cath. A., P. R., Pyne, M. T. Pyne, L. Turnure, Ttees, Kate M. Winthrop	9,775
Farmers Loan & Trust Co., Trustee	4,314	Do Henry A. C. Taylor	9,775
Fidelity-Phenix Fire Ins. Co.	4,700	Twombly, Florence A. V.	5,000
Graves, Henry Jr., & Geo. Coe Graves, Ttees. U/W Henry Graves	9,100	Union Trust Co., of N. Y. Ttee., etc.	7,334
Higgins, Eugene	14,663		

Lewis, Frederic E.	4,621	Vanderbilt, F. W.	8,900	133
Lewis, Percy P.	4,621	Do. W. K.	39,900	
Lovatt, Fred J.	4,600	Work, Frank, Dec.	11,500	
			338,051	

Copy of second list referred to by the witness:

"LIST OF STOCKHOLDERS OF THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY HOLDING 1,000 SHARES OR OVER.

Wm. Waldorf Astor	1,553	
George F. Baker	10,000	
C. Ledyard Blair	1,000	134
Geo. Blumenthal	2,624	
Josephine Brooks	2,263	
Amos F. Eno	2,290	
H. C. Fahnestock	2,250	
Fahnestock & Co.,	3,406	
Fidelity, Phenix Fire Ins. Co.,	1,165	
Henry Graves, Jr., and Geo. C. Graves, T'tees. U/W Henry Graves,	1,975	
Eugene Higgins,	3,188	
Frederick R. Lewis,	1,004	
Percy P. Lewis,	1,004	
David M. Look,	1,000	
Fred J. Lovatt,	1,000	135
William H. Moore,	1,675	
Catharine T. Moulton,	1,004	
T. J. Mumford,	2,200	
Mutual Life Ins. Co.,	1,500	
Maud Howland Pyne,	1,250	
Moses Taylor Pyne,	3,566	
M. T. Pyne and S. S. Palmer, T'tees for Kate W. Winthrop,	2,200	
Do T'tees for Henry A. C. Taylor,	2,200	
John F. Talmage,	1,800	

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Florence A. V. Twombly,	1,000
Union Trust Co. of N. Y.,	1,250
F. W. Vanderbilt,	1,500
W. K. Vanderbilt,	9,000
Est. Frank Work,	2,500
	68,997

This is a form of notice that was sent to all the customers:

"The Delaware, Lackawanna & Western Coal Co.
137 Vendors of
The Delaware, Lackawanna & Western Railroad Company's
Scranton Anthracite
Ninety West Street, New York.

Effective August 1st, 1909, the entire output of Coal of The Delaware, Lackawanna & Western Railroad Co. will be purchased at the mines and marketed by the Delaware, Lackawanna & Western Coal Company.

The Delaware, Lackawanna & Western Coal Co. assumes all coal sales obligations of The Delaware, Lackawanna & Western Railroad Co., and invites a continuance of the confidence and liberal patronage which the trade has con-
138 ceded to The Delaware, Lackawanna & Western Railroad Co. in the past.

E. E. LOOMIS,
July 15th, 1909." President.

The Company also sent out a vast number of notices with respect to the appointment of different individuals as sales agents or whatnot. For instance, I hand you one with reference to the employment of Mr. H. A. Smith of Scranton, Pa., one with reference to the appointment of

John J. Town of Utica, one with reference to the appoint- 139
ment of Mr. E. H. Read at Buffalo; one with reference to Mr. Abbott at New York; one with reference to the appointment of Mr. W. B. Palmer, at Detroit, Michigan; one with reference to the appointment of Mr. G. W. McEathron at Syracuse; one with reference to the appointment of Mr. Memory of Newark. Here is one with reference to the appointment of the Northwestern Fuel Company at various points in the West. Another with reference to the appointment of the Milwaukee-Western Fuel Company at Milwaukee; another with reference to the appointment of Mr. S. C. Schenck at Toledo, Ohio, and Chicago, Illinois; another with reference to the appointment of E. L. Hedstrom & Company at Chicago. Another with reference to 140
the appointment of the Ogdensburg Coal and Towing Company at Montreal, Quebec.

Q. Were any other notices to the trade or to any other persons generally sent out by the Railroad Company?

A. No, sir.

Q. Were there any notices sent to the employees either of the Railroad Company or the Coal Company?

A. To employees?

Q. To employees.

A. No written notice, so far as I am informed.

Q. At the last session you stated that you would furnish me the fact as to what transportation was furnished to employees of the Coal Company by the Railroad Company, 141
subsequent to its organization?

A. During a period of a year and thereafter until sometime less than two years intrastate transportation in the State of New Jersey was furnished to some employees of the Coal Company.

Q. And that practice was discontinued because of the changes and prohibition in the New Jersey laws?

A. I think that was discontinued before the Jersey law was adopted, but I am not sure about that.

Q. Have you in your possession here in the offices any

142 larger and more adequate map than this one of the Railroad Company's branches, curves, etc.? We would like to have a copy to put in the record.

A. We have a map of that and I will try to get a map for you.

Mr. Coudert: Mr. Jenney states that he will furnish for the purpose of the record a complete map of the railroad showing in detail all its lines, spurs and accesses to the coal region, collieries, etc.

Q. I note in the answer of the Coal Company a statement that the defendant Railroad Company has been accustomed to buy some of the output shipped from some
143 of the mines and breakers located along its line which are owned and operated by others. Will you kindly explain to me what you mean by the phrase, "along its line."

A. That is with which it had track connections.

Q. With which it had track connections?

A. Yes, sir.

Q. That is direct tracks running into the collieries?

A. Yes.

Q. You didn't mean by "along its line" collieries nearer to the Delaware, Lackawanna and Western Railroad than to any other railroad?

A. No, sir. In railroad parlance that is treated as those with which the railroad has direct connection. In other
144 words, collieries whose output you can physically take.

Q. Have those collieries to which you say the railroad has access—have those collieries also connection with other railroads?

A. Some have, most of the independent collieries, so-called, have connection with more than one railroad.

Q. Has the Railroad Company been accustomed to buy the total amount of output from these mines and breakers along its lines?

A. No, the figure of the so-called independent coal, that is, coal not mined by the Railroad Company, but coal which

the Railroad Company could purchase because it has tracks serving the collieries, and which it has purchased during the past years has varied depending entirely on various different conditions, whether or not we had a contract to purchase that coal which was in existence and on account of which the colliery was required under the terms of the contract to sell us that coal, whether or not the coal of that colliery was sold at a point reached by the lines of the Delaware, Lackawanna and Western Railroad Company or by some other lines. If that was reached by the lines of the Delaware, Lackawanna and Western Railroad Company we got the transportation. Generally speaking, if they could more profitably sell that coal at some point off our line we didn't get the transportation of that coal, if they could sell that coal in the market and were not tied up to us by contract, sell it on a more profitable basis than they could sell us, they would sell to somebody else. Those conditions vary the amount of coal which we got from those so-called independent collieries. 145 146

Q. Is it a fact as alleged in the complaint, that in 1911, 1,510,000 tons were purchased?

A. I can give you the exact figures for 1911 if you desire them.

Q. I would like to have them.

A. For the year 1911, I will give you all the figures for that year. There was produced by the Delaware, Lackawanna & Western Railroad, that is, mined by the Delaware, Lackawanna & Western Railroad, from its own mines a total of 8,373,876.19 tons of anthracite coal; there were produced by other operators located upon the line of the Delaware, Lackawanna & Western Railroad with which it connected by track connections a total of 6,335,887 tons, making a total of anthracite coal mined upon the Delaware, Lackawanna & Western Railroad 14,649,763.19 tons. Of that total there was used by the Delaware Lackawanna & Western Railroad Company, for its own purposes, in its locomotives, etc., a total of 1,448,765.10 tons. There was appropriated by other 147

148 operators for their own use a total of 873,043 tons making a total used for their own purposes by the producers of the coal of 2,361,805.10 tons. The balance being the total amount of commercial coal which was sold, or 12,287,958.09 tons. Of this total there was sold to the Delaware, Lackawanna & Western Coal Co. 8,402,345.03 tons, being 68.38 per cent., and there was sold by other shippers to other dealers on their own account a total of 3,885,613.06 tons, being 31.62 per cent.

Q. Was 1911 a representative year?

A. Yes, sir.

Q. And the sources of your statistics are what?

A. The sources of statistics are the figures which were prepared by the Auditing Departments of the Delaware,
149 Lackawanna & Western Railroad Company and the Coal Company, from various audits which they have and which they obtained from computations and reports.

Q. And do I understand all this tonnage was shipped over the Delaware, Lackawanna & Western lines?

A. No, sir, I don't understand so.

Q. You don't understand so?

A. No, sir, I don't understand so.

Q. You don't know what proportion?

A. I should say that the most of the 31.62 per cent. which was sold by shippers on their own account was not marketed over the lines of the Delaware, Lackawanna & Western Railroad Company.

150 Q. Have you then any way of computing from the facts and figures in your possession the exact percentage of coal located along your lines, and owned and operated by others which has been transported by you?

A. I can give you that.

Q. Will you let me have that please?

The witness furnishes the following table:

1. Total tonnage originating on D., L. and W., mined, washed, purchased and private shippers.

2. Total tonnage purchased on 65 per cent. contract covered by contract, and tonnage purchased on same basis not covered by contract. 151

3. All coal originating on our line, not purchased, but sold or shipped direct.

4. Percentage of sizes below Pea of total production of D., L. & W. mined and washed.

Above shipments for years 1909, 1910 and 1900.

	1900	1909	1910
Mined,	4,210,965.15	6,992,186.16	7,365,114.07
Washed,	318,925.11	815,111.19	712,988.10
	4,529,891.06	7,807,298.15	8,078,102.17
Purchased			
Contract,	568,845.14	509,078,14	415,215.15
No Contract,	477,360.01	1,031,679.12	912,186.15
Total Purchased,	1,046,205.15	1,540,758.06	1,327,402.10
Mined by Kingston Coal Co.,	144,403.12	296,252.09	314,692.13
Total mined, washed and purchased,	5,720,500.13	9,644,309.10	9,720,198.00
Private shippers,	72,808.17	529,802.03	410,118.00
	5,793,309.10	10,174,111.13	10,130,316.00
Percentages of Sizes below Pea:			
D., L. & W. mined and washed.	19.2	34.6	33.9

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Q. There are some figures which show all the coal which originated along the line other than your own coal?

154 A. I have given you that for 1911 here.

Q. If we take the amount you buy, of course that shows the exact proportion. Have you made those figures for 1912 similar to those you furnished for 1911?

A. No, sir.

Q. They are not made up yet?

A. No, sir.

Q. Was that an average year?

A. I think so. Of course, it varies more or less from year to year. I think 1911 is a fair year. I would say that for 1912 there would be very much less percentage of independent coal purchased by the Coal Company than 1911, because there was a strike in that year and a great deal more inde-
155 pendent coal was sold outside than was sold to the Railroad and Coal Companies; they could get better prices for it.

Q. Will you furnish me the balance sheets and income acocunts of the Railroad Company from 1908 to 1912 inclusive, and the Coal Company from 1909 to 1912 inclusive?

A. The balance on hand and the income was carried to profit and loss account, was that what you want?

Q. Yes.

A. For the year 1908 that was 10,697,125. We will give you a copy of the report and stipulate on the record that you may read into the record any matter that you desire from these reports.

Q. Does the Railroad Company grant to the Coal Com-
156 pany lower rates of transportation to tide water than the rates granted to independent shippers?

A. No, sir.

Q. There is absolute equality as to that?

A. Every rate is published and is open to all shippers.

Q. What storage privileges if any are granted by the Railroad Company to the Coal Company?

A. When the Coal Company was formed the Railroad Company leased to the Coal Company its large storage plant at Cheektowaga, Buffalo, at Port Morris in the State of New Jersey and at Dover in the State of New Jersey. These

plants were necessary for the use of the Railroad Company 157
when it was engaged in the sale of its coal, because during a portion of the year you can't dispose of your output and have to store more or less of it, and we used those big plants for the storage of coal, and when the Coal Company was formed and agreed to take over all of our coal we turned over these big plants to the Coal Company under our lease to the Coal Company. Now, these plants are now solely used by the Coal Company for the storage of the coal which is purchased from the Railroad Company.

Q. And the Coal Company now uses these plants exactly as the Railroad Company had used them prior to the formation of the Coal Company?

A. Correct, sir. I have here the figures of the operation 158
of those plants if you are interested in them.

Q. I should like to have them.

A. Those are figures showing the amount shipped to the storage plants from August 1st, 1909, to December 31st, 1912.

Paper referred to is offered with privilege to the other side of referring to such portion as they may see fit.

Paper marked P10.

Q. What is the five-day average rule as applied to shipments of coal?

A. For a good many years, Mr. Coudert, there was no 159
demurrage on anthracite coal, this, for the reason, I take it, that the Railroad Company when they sold their own coal found it convenient to store the coal in their own cars, and not move the cars promptly, and they thought it would not be fair to treat independents any differently than they did themselves. I take it that was the reason, but, of course, in the course of time the Railroad Company found that the free storage of coal in cars—that that privilege was being abused generally, and I think all the companies now have a demurrage rule for coal cars, such as there is for other cars, but the

160 demurrage rule for cars used for shipment of anthracite coal is what is known as a five-day demurrage, and the shippers of anthracite coal generally sign what is known as the five-day demurrage contract, which gives them the right to hold coal cars at originating or distributing points an average of five days without demurrage, and if they are held longer than that, an average during the month, the cars they have are held longer than five days' time, they pay the ordinary demurrage charge to the Railroad.

Q. The storage facilities of which you speak, and which are now enjoyed by the Coal Company consequently give the Coal Company a great advantage over the independent?

A. I would say a disadvantage, because it must be an ex-
161 pensive operation for the Coal Company, which isn't true of the independents.

Q. Yes, but the Coal Company can store its coal in quantities as you have testified, free, whereas the independent at the end of five days has to pay storage?

A. The Coal Company can't store it free, there is considerable expense at these places where coal is stored. There are the same demurrage charges for holding cars at points of destination or originating points, and the coal is taken out of the cars and stored there. It is a tremendous loss to the Coal Company, the unloading and the rent for the trestle and the cost of loading again in the cars. The Coal Company would not, I imagine, have these storage places and the ex-
162 pense incident thereto, except for their obligations to the Railroad to take all their coal. That is one of the advantages accruing to the Railroad Company and that is one advantage of our contract, we mine our coal all the time. The independents engaged in the sale of coal would not buy their coal except when they could sell it and would not be under the obligation to take it at a time they could not sell and store it, and the fellow mining the coal would shut down for a period of time when there is no market for the sale of the coal, and in that way relieve himself of the expense of accumulating coal which he can't sell.

Q. Prior to the formation of the Coal Company these great 163
storage plants were an advantage to the Railroad Company?

A. They were undoubtedly, there is no doubt about that, Mr. Coudert, because they enabled us to mine full blast throughout the year, you see.

Q. So that taking the Railroad Company and the Coal Company together as things at the present stand they would have a great advantage over the independent shipper who has not the storage facilities?

A. The fact is, that is an advantage to the Railroad Company as a producer of coal because the Coal Company takes the coal throughout the year, and in that way the arrangement is an advantage to the Railroad Company. I can't see how in any respect it is an advantage to the Coal Company 164
over other shippers on account of this arrangement.

Q. As a matter of fact as against the other shippers the Railroad Company and the Coal Company derive a very considerable advantage from these facilities for the storage of coal?

A. I don't see how. I can't properly answer that question. I can't fairly answer that, because what I am looking at is this, Mr. Coudert. I can compare the Railroad Company as a shipper with another individual who is a shipper and who is engaged in mining coal. Now, the other individual who is engaged in mining coal also sells his coal to someone, individual or corporation, and I can compare the Railroad Company and the Coal Company with an individual 165
producer, and an independent selling agency together, but I can't compare the two with a part of the other, namely, simply the independent purchaser.

Q. But prior to the incorporation of the coal-selling department the storage facilities, to which you have testified, gave the Railroad a very considerable advantage over the independents?

A. It gave this advantage and no more; that the Railroad Company was able to continue to mine its coal all the year round and the independent probably could not do so as advantageously as the railroad.

166 Q. And that is still a fact?

A. There is no reason in the world why the independent could not, if he wanted to put up the capital, get the storage plants.

Q. As a matter of fact are not the independent coal producers, along the line of the railroad, entirely at the mercy of the Railroad Company?

A. Not at all, these independent producers of coal received, some of them, two and two dollars and a quarter a ton more than the Coal Company did for coal right after the strike, and the independent purchaser had an advantage over the Coal Company.

Q. I mean they do if the Railroad Company refuses to pur-
167 chase their coal and discriminates against them in the use of trestles and has advantage in the way of storage plants, etc.?

A. If they want to sell their coal to the Railroad Company on the basis of a 65 per cent. contract they can sell it to the Railroad Company on that basis at any time no matter what the conditions of the market are, and if they think that the coal is worth more than that they don't sell it to us, so that they always have a purchaser for the coal on the basis of the 65 per cent. contract, which is a very favorable sale of coal, a sale which we were perfectly willing to make of our coal to the Coal Company. If they can get a better price than that they don't sell it on that basis, whereas the Coal Company
168 always pays that for their coal.

Q. But of course there is no other railroad running in and they are entirely dependent upon the D. L. & W.?

A. That situation today is that there is no reason why the independent should not have more than one railroad and if they have considerable tonnage there isn't any trouble to get another railroad.

Q. What other railroads are there in the regions which you serve?

A. The Ontario and Western, the Lehigh Valley and Erie, and the Delaware and Hudson.

169

Q. The Central does not go in there?

A. The Central does not reach any collieries that we do.

Q. Nor the Reading?

A. Nor the Reading.

Q. Is that five-day average rule enforced against the Coal Company?

A. Yes.

Q. But, of course, in their case it would be a matter of indifference because they have the storage facilities?

A. I would hardly say that, their storage facilities are simply storage facilities, Mr. Coudert, at three points, where under this contract they are forced to take coal in seasons they can't sell it and keep it in storage until they can sell it. They are the largest shippers on our road and they get 170 coal at various points, Oswego, Syracuse, Buffalo, Hoboken and this average rule is applied to them just the same as to any other shipper, and if they hold the cars of the Railroad more than an average of five days a month they pay the Railroad Company demurrage on those cars just the same as the other shippers.

Q. What is the physical history of coal sold to the Coal Company from collieries of the Railroad Company, and when is it transferred by the Railroad Company to the Coal Company?

A. The title to that coal is fixed in the Coal Company the minute the coal is loaded at the mine. We load the car with coal and then it becomes the coal of the Coal Company. 171

Q. What is there to evidence that, what form is used?

A. A slip for the movement of that coal says it is the coal of the Coal Company.

Q. Is that signed to indicate a purchase of the coal?

A. A movement of the coal as the coal of the Coal Company.

Q. And is it accepted by somebody on behalf of the Coal Company?

A. There is no acceptance of the coal by the Coal Company until it reaches some point where they make use of it.

172 For instance, it may go into one of the coal storage plants, one of their trestles along the line of the railroad, or it may go up on a trestle at Buffalo and then be shipped in boats and transported from that point.

Q. Then is there anything to show who is the owner of that coal until it reaches some depot or point of embarkation?

A. I couldn't tell you just what the detail of that is. Of course there is some of the coal which we produce which we appropriate for our own purposes.

Q. Is there any inspection on behalf of the purchaser, the Coal Company?

A. Yes.

173 Q. When?

A. All coal is inspected.

Q. When?

A. It is inspected as it is loaded into the cars, as I understand it.

Q. That is it is put right through at the mine, and the orders for the movement of the coal are given by the Railroad Company?

A. The orders for the movement of the coal, are given, I think, so far as getting the cars to the places where they are made up into trains, I think that is done in the ordinary course of business, but the order with reference to movement of the cars after the trains are made up are given by the Coal

174 Company.

Q. Do you remember whether the subscription to the Coal Company's stock was open to the public at any time, or whether any of the stock was offered to any one except the stockholders of the Railroad Company?

A. At the time of the original formation of the Coal Company no one was tendered a subscription except stockholders of the Railroad Company.

Q. Were any options to purchase stock of the Coal Company offered to certain employees of the Railroad Company?

A. Not originally, but about six months, I think, after the

formation of the Coal Company, it appeared there was certain stock which had not been subscribed for, a portion of this 2,000 shares, and the Board of Directors of the Coal Company passed a resolution permitting the employees of the Coal Company to subscribe at par for a certain portion of that stock, I think 1,000 shares of it. 175

Q. That was the amount of stock not subscribed for by the stockholders and was offered with a condition?

A. That was tied up with a contract which the employee must sign that he would not sell the stock within a period of five years, or whatnot.

Q. That appears on the minutes. Between what dates was the stock of the Coal Company subscribed for and paid for?

A. The stock of the Coal Company was all subscribed for between the first day of July, 1909, and the first day of the following August. There may have been some stock that may not have been paid for, practically nothing, it was all paid for, I think. 176

Q. The prices of coal f. o. b. New York are uniform, are they not?

A. I should say not, but I don't pretend to have knowledge to answer that question.

Q. Do you understand the workings of the Bureau of Anthracite Statistics?

A. I know in a general way about it, yes, sir.

Q. Tell me about it in a general way.

A. Well, sir, for a great many years the Railroad Company purchased coal as I say on a basis of 65 per cent. contract, and prior to that on a basis of 60 per cent. or 55 per cent. contract. The amount they paid for that coal was 65 per cent. of the tide water sale price, and in order to determine that price someone kept statistics showing what coal sold for so that everybody that sold coal at tide water reported the price at which that coal was sold to a chap who kept the figures. He kept the figures, and at the end of the month made up a statement showing what the sale price of coal was, and on the basis of those figures the money was paid. 177

178 When we had that serious strike in the anthracite region, I think ten years ago, something like that, before I came down here to New York, a commission was appointed by President Roosevelt between the employers and the miners, and one of the findings of that commission was that the miners should be paid on what was known as a sliding scale of wages, and when coal sold for a certain price at New York the wages of the miners would be such a wage, and when the F. O. B. sale price of coal increased there would be such increase to the miners. That made it necessary under that rule to continue this practice of keeping the reports of what coal was sold for at tide water and keeping that amount of coal, making those figures, in order that the order of the commission
179 might be complied with.

Q. And that bureau is still in operation?

A. Yes, sir.

Q. How is it supported, by general contributions from the companies?

A. I think all of the persons, not only the big anthracite companies, so-called, of which the railroads own the capital stock, but various so-called independent anthracite owners, contribute to the support of that bureau. I don't know whether the government contributes or not, but it uses the reports continually.

Q. You have spoken of the number of trestles and coal facilities which were turned over to the Coal Company, as
180 I understand it, by lease?

A. Yes, sir.

Q. Was there one lease for all of that, or a number of leases?

A. One lease, yes, sir.

Q. Will you furnish us a copy of that?

A. Yes, sir, the lease itself is about the same size as the contract.

Q. Do you remember when the notices to stockholders with regard to the proposed organization of the Coal Company were sent out?

A. About the first of July, 1909. 181

A. On page 23 of the minutes you testified as to the time of your employment as counsel for the Coal Company. I have found from examination of the Coal Company's minutes that you are actually described as counsel for the Coal Company in the resolution in July, 1909?

A. I wasn't paid for the month of July, my compensation didn't commence before the month of October.

Q. I suppose there is no doubt as to the correctness of the minutes?

A. I have no doubt that I advised those people, Mr. Loomis and the other officers of the Coal Company at any time during the month of July and August, but I was not employed as counsel or compensated until, I think, the first of October 182 of that year; it may have been the first of November.

Q. You have spoken of correspondence between counsel as to the organization of the Coal Company. Will you be willing to produce that?

A. I would have no objection whatever to producing the correspondence of that nature for your personal examination, but I do not believe that it would be proper for me to furnish that correspondence for the purpose of putting it into the record in this case, because it is confidential. The correspondence discusses various legal questions, as to the propriety of this and the propriety of that, and whether this would be legal and whether that would be legal and what not. It does not seem to me it would be a proper thing to intro- 183 duce into a record of this sort.

Q. Will you kindly furnish me with a list of the Directors of the Railroad Company and the Coal Company at the present time?

A. The Directors of the Railroad Company you can read into the record from the annual report of 1912, with which you will be furnished a copy. There have been various changes the last few years, a number of changes in the Board of Directors since 1909 when the Coal Company was formed, a number of deaths in the Railroad Company's Board, Mr.

184 Twombly, Mr. Work have died, and I think Mr. Higgins died.

Mr. Kingsbury: He resigned, I think.

A. At least he is not a member. Mr. Maxwell, I have forgotten whether he is dead or not. The new members of the Board not members at that time are Mr. George F. Baker, Jr., a new member of the Board, William H. Truesdale, Mr. John F. Talmage, Mr. S. S. Palmer was a member but he has recently died so there have been several changes in the Board of the Railroad Company. There have been no changes in the Board of the Coal Company, except the one I mentioned, Mr. Blumenthal in the place
185 of Mr. Gardner.

Q. Do you know who operates the marine barges owned by the Railroad Company?

A. No, sir.

Q. Your answer denies that they are operated by the Railroad Company?

A. The situation about that is this, Mr. Coudert, those barges are a lot of barges which are a lot of encumbrances which we have on our hands and have no use for. The Railroad Company used them when largely engaged in the sale of its coal in New England, but withdrew from that market before the Coal Company was formed, and after the Coal Company was formed a very little of its coal
186 was marketed in New England, so that we had all those coal barges on hand and no use for them, and the last few years we have done the best we could with them. If anybody came along and wanted a barge we chartered it to them, we charter them to any individual who comes along and wants them.

Q. Are they chartered now by the Coal Company?

A. Some of them are chartered by the Coal Company as they wanted them, and some are chartered by various individuals, but they are owned by the Railroad Company.

Q. So that all that that denial amounts to in the answer is this: The Railroad Company owns the barges, but

187 does not operate them, but simply charters them to the Coal Company or anybody else that wants to use them?

A. Correct.

Further direct examination by Mr. Kingsbury:

Q. I believe you testified at the last session that the stock of the Coal Company was not at all actively dealt in. Do you know of any sales of the stock within the past year and a half, and the prices realized?

A. My notion is that the stock has been selling at various prices during the time since this suit was started, from $225 a share to $275 a share.

Q. That is since this suit was started?

A. February 15th, 1913.

188 Q. At what figure was it selling before the suit was started?

A. Substantially one hundred points above that.

Q. That is $325 to $375?

A. Yes.

Q. Did the drop take place immediately after the suit was started?

A. That is my information, yes, sir.

Q. What is the present quotation for the Railroad Company's stock; do you know?

A. About $400.

Q. Has it been about the same for the past year?

189 A. About the same for two or three years past, except the change in the price of the stock which resulted from the increase of the number of shares.

Q. That twelve million dollar increase?

A. Yes, sir.

Q. What was it before that?

A. It was five hundred and twenty; something like that.

Q. Was there any change in the Railroad Company's stock shortly prior to the organization of the Coal Company?

A. Yes, sir. I was giving you the prices on the basis of a hundred dollars a share, they are fifty dollars.

190 Q. Both companies have fifty dollar shares?

A. The price I gave you was on the basis of one hundred dollars.

Q. I ask you to produce the minutes of the Coal Company since its organization. A. (Witness produces book.)

Mr. Kingsbury: I should like to put this in evidence, to be copied in from the book in such way as may be convenient, the minutes of the first meeting of the incorporators, contained on pages 1, 2, 3, 4 and 5, omitting the copies of the certificate, and copy some one of the stock transfers, stating that the others are in the same form.

191 (Copy of pages 1, 2, 3, 4 and 5 referred to by counsel.)

"Meeting of Incorporators

The Delaware, Lackawanna & Western Coal Company.

The first meeting of the incorporators of The Delaware, Lackawanna and Western Coal Company was held at the office of the Hudson Trust Company, at No. 51 Newark Street, in the City of Hoboken, New Jersey, on the 30th day of June, 1909, at three o'clock P. M.

There were present:

Messrs. William Fahnestock, Percy R. Pyne, 2nd., and E. E. Loomis, being all the incorporators and all the sub-
192 scribers to the capital stock of the company.

The following proceedings were had:

The meeting was called to order by Mr. Fahnestock, and, on motion, Mr. Loomis was elected Chairman and Mr. M. M. Stallman was elected Secretary.

Mr. Loomis took the chair, and Mr. Stallman presented a certified copy of the certificate of incorporation of the company, which was duly recorded in the office of the Clerk of Hudson County, New Jersey, on June 29th, 1909, and duly filed in the office of the Secretary of State of New Jersey on June 30th, 1909.

193

It was ordered that a copy thereof be prefixed to the minutes of this meeting. (Certified copy attached opposite page 1.)

Mr. Loomis then presented a waiver of notice of this meeting, and it was ordered that the same be filed with the Secretary.

(Waiver referred to above interleaved between pages 2 and 3.)

Mr. Fahnestock thereupon submitted for the consideration of the incorporators a set of by-laws, which he explained and recommended for adoption to the incorporators.

After some discussion, and on motion and by affirmative vote of all present, it was

194

RESOLVED: That the form of by-laws now submitted to this meeting be, and hereby the same are, adopted as the by-laws of the company, subject to alteration or amendment thereof as therein provided from time to time by the Board of Directors, and that a copy thereof be affixed to the minutes of this meeting.

(Copy of by-laws interleaved between pages 6 and 7.)

The Secretary presented the following transfers of subscriptions:

Mr. Percy R. Pyne, 2nd.,	to	Mr. W. H. Truesdale,	1	share.
do	"	" George H. Gardiner,	1	"
do	"	" Henry R. Taylor,	1	"
do	"	" George F. Baker, Jr.,	1	"
do	"	" James A. Stillman,	1	"

195

Upon motion duly seconded, the transfers of subscription presented at this meeting were approved and accepted in behalf of the company.

Upon motion and by affirmative vote of all present, it was

RESOLVED: That the incorporators do proceed to the election of the first Board of Directors of the company, such Board to consist of seven Directors; and that Mr. E. F. Briggs and Mr. W. H. Heilshorn be, and hereby they are, appointed Inspectors of Election.

196 The inspectors having duly qualified, the polls were opened and remained open until all the incorporators and subscribers to the capital stock of the company had voted; the polls thereupon being closed, the vote was canvassed and the inspectors reported that the ballot showed that the following named persons were unanimously elected Directors for the terms set opposite their names, votes representing 251 shares having been cast for each of such persons, that is to say:

George F. Baker, Jr.,	251 shares
Henry R. Taylor,	251 "
Percy R. Pyne, 2nd.,	251 "
197 James A. Stillman,	251 "
Geo. H. Gardiner,	251 "
Edward E. Loomis,	251 "
William H. Truesdale,	251 "

(Inspectors' certificate interleaved between pages 2 and 3.)

The Chairman then presented to the meeting an instrument, signed by all the incorporators and subscribers to the capital stock of the company, waiving assessments and notice of assessments on their subscriptions, and it was ordered that such instrument be filed with the Secretary.

(Waiver referred to above interleaved between pages 4 and 5.)

On motion and by affirmative vote of all present, it was

198 RESOLVED: That the Directors assess the stock heretofore subscribed for one hundred (100) per cent. in accordance with the terms of the waiver signed by the subscribers.

The following resolutions were adopted by affirmative vote of all present:

RESOLVED AND ORDERED: That in compliance with the laws of the State of New Jersey (Revision of 1896, approved April 21, 1896), this company have and continuously maintain a principal office and place of business within the State of New Jersey and have an agent at all times in charge thereof, and upon which agent process against this company

may be served, and therein keep the stock and transfer books for the inspection of all who are entitled to see the same and for the transfer of stock; that the books in which the transfers of stock shall be registered and the books containing the names of the shareholders shall be at all times during the usual hours of business open to the examination of every stockholder at such principal office; and that the name of this company be at all times conspicuously displayed at the entrance of its principal office in this State. 199

RESOLVED AND ORDERED: That until the location of the principal office of the company shall be changed by the stockholders or by the Board of Directors, as authorized by law, the principal office and place of business of the company be in and at the office of the Hudson Trust Company, at No. 51 Newark Street, Hoboken, New Jersey. 200

RESOLVED AND ORDERED: That until otherwise directed by the Board of Directors, the Hudson Trust Company be and hereby it is, appointed agent of this company, upon whom legal process against this company may be served within the State of New Jersey, and also the Transfer Agent of the stock of this company.

On motion, the meeting adjourned.

M. M. STALLMAN,
Secretary of the Meeting."

The witness also produces stock transfer referred to, a copy of which is as follows: 201

"New York, June 30th, 1909.

I, Percy R. Payne, 2nd., for value received, hereby sell, assign, transfer and set over unto William H. Truesdale of the City of New York, N. Y., one share of the capital stock of the Delaware, Lackawanna and Western Coal Company, and authorize and direct the Treasurer of the Delaware, Lackawanna and Western Coal Company to issue to him a certificate therefor.

PERCY R. PYNE, 2ND."

202 (Other transfers in same form as above to George H. Gardiner, Henry R. Taylor, George F. Baker, Jr., and James A. Stillman, signed by Percy R. Pyne, 2nd.)

Mr. Kingsbury: I also read in evidence from the minutes of the meeting of Directors, of July 1st, contained on page 12 of the minute book:

"Further resolved: That the Trust Company may apply to and act upon the instructions of W. S. Jenney, Esq., the counsel of this company, in respect to any legal questions arising in connection with said agency."

203 Mr. Kingsbury: I also read in evidence from the minutes of the same meeting, the resolution on page 12, authorizing the making of a contract with the Railroad Company, contained on the last half of page 12 and the first part of page 13, in fact, all of page 13, which is as follows:

"The President presented draft of proposed contract of the Delaware, Lackawanna and Western Railroad Company, copy of which is attached hereto, for the sale of its coal upon terms as stated therein.

On motion of Mr. James A. Stillman, seconded by Mr. Percy R. Pyne, 2nd., it was unanimously

RESOLVED: That this company agree to purchase the
204 coal described in said contract upon the terms stated therein, and agree to all the terms and conditions of such contract, and that the proper officers of this company be and hereby are authorized to execute on behalf of this company under its corporate seal, and to deliver in the State of New Jersey, such proposed contract when executed, a copy of which to be annexed to these minutes.

(Copy of contract referred to above interleaved between pages 12 and 13.)

FURTHER RESOLVED: That this company agree with the Railroad Company as to the terms of lease, and as to the

other matters provided to be agreed upon in such contract, and that the proper officers of this company be and hereby are authorized to execute such lease and such other contracts therein provided for as may be agreed upon." 205

Mr. Kingsbury: In connection therewith, I read in evidence from page 10, the following, being a part of the minutes of the same meeting:

"The Treasurer then called attention to the subscription of the capital stock of the company in the certificate of incorporation, to the amount of 251 shares of stock, amounting in the aggregate to $12,550.00."

206

Q. This was all of the stock of the Coal Company that had been subscribed for at this time, was it not? This was a meeting July 1st, 1909?

A. I should say, yes, that stated the number of shares of stock which had to be subscribed for under the New Jersey law to form a corporation. If you will look at the certificate of incorporation, you will see the names of the persons and the number of shares of stock they subscribed for, being the incorporators of the company. Mr. Wm. Fahnestock, 150 shares; Mr. Percy R. Pyne, 2nd., 100 shares and Mr. Edward E. Loomis, 1 share; that constituting the 251 shares.

Mr. Kingsbury: I also read in evidence from the minutes of the Directors' meeting of December 29th, 1909, contained on page 25, the resolution for granting to certain employees of the company options to take stock of the corporation, including a copy of the contract, which is as follows: 207

"The following Preamble and Resolution were unanimously adopted.

WHEREAS, certain stock of this company under the plan of organization, was not taken by stockholders of the Delaware, Lackawanna and Western Railroad Company, and remains in the treasury of this company, and the Board

208 are of the opinion that it would be to the interests of the company to permit a limited amount of its stock to be subscribed for and held by its employes.

Therefore be it

RESOLVED: That the employes of this company be permitted to subscribe for, at par, such number of shares in the stock of this company as may be approved by the President, upon executing the form of contract hereto attached. The total number of shares of stock to be so subscribed for not to exceed one thousand (1,000) shares.

(Form of contract referred to in above interlined between pages 24 and 25.)

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209 (Copy of contract.)

"Whereas, The Delaware, Lackawanna and Western Coal Company has decided to permit certain of its employes to subscribe for a limited amount of its stock in order that they may have a direct pecuniary interest in the prosperity of the company; and

Whereas, such employes are desirous of so subscribing for such stock with the understanding that the same shall be held by them as herein provided for the purpose aforesaid,

Now, therefore, in consideration of the premises, and of one dollar ($1.00) by each party to the other paid, it is

210 agreed that the said Coal Company will permit , employed by it as , to subscribe for shares of the stock of said company, at par, and the said , for himself, his executors, administrators and representatives, hereby agrees that, during a period of five years from the date hereof, he will not sell or otherwise dispose of said stock until after he has requested said Coal Company to reimburse him therefor at par, but will hold the same during said time for the purposes herein set forth.

It is further mutually agreed, that if at any time when

the said may desire to surrender 211
such stock to said Coal Company, or if within said period of five years the said shall cease to be employed by said Coal Company, the Coal Company will, upon delivery of certificate for said shares of stock, repay to said , or to his executors, administrators or representatives, the par value thereof in cash, and said , agrees that in any such event he will surrender such stock to said Coal Company upon payment therefor at par.

In case of his death within said five years, said stock shall belong absolutely to his executors, administrators or representatives.

IN WITNESS WHEREOF, the parties hereto have exe- 212
cuted this instrument, at the City of New York, the day of , 1909.

THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY,

By.....

....."

Mr. Kingsbury: I call your attention to the note in the minutes of the Directors' meeting of May 29, 1912, on page 56, with regard to purchasing control in the Elias Rogers Company of Toronto, which is as follows:

"The regular meeting of the Board of Directors of The 213
Delaware, Lackawanna and Western Coal Company was held at the office of the company, No. 90 West St., N. Y. City, May 29th, 1912.

Present—Messrs. G. F. Baker, Jr.
H. R. Taylor,
W. H. Truesdale and
E. E. Loomis.

The minutes of the meeting held April 24th, 1912, were approved as read.

214 The President brought to the attention of the Board the question of the desirability of purchasing control in the Elias Rogers Co., Limited, of Toronto, Canada.

The matter was referred to the President, with authority.

There being no further business, the Board adjourned.

J. J. A. OWENS,
Secretary."

Q. What was the Elias Rogers Company?

A. It was a corporation which engaged in the retail sale of anthracite and bituminous coal and wood.

215 Mr. Kingsbury: I read in evidence from the minutes of the Directors' meeting of May 26, 1913, page 66, resolution declaring a special dividend of 20%, which is as follows:

"RESOLVED: That a special dividend of twenty (20) per cent. be and hereby is declared, from the surplus earnings, payable April 15th, 1913, to stockholders of record, at the close of business April 1st, 1913."

Q. I ask you to produce the minute book of the Railroad Company?

A. (Witness produces book.)

216 Mr. Kingsbury: I read in evidence from the minutes of the Directors' meeting of June 22, 1909, on pages 8 and 9, the resolution authorizing the execution of a contract with the Delaware, Lackawanna & Western Coal Company, and ask to have it copied in the record with the contract.

"The President presented the following form of contract for the sale of all coal mined and purchased by the company within the State of Pennsylvania.

RESOLVED: That the proper officials of the company be and are hereby authorized to execute in behalf of this company with The Delaware, Lackawanna & Western Coal Com-

pany the above mentioned contract and that a copy thereof 217
be spread in full upon the minutes."

Q. The copy of the contract bears date August 2nd, 1909, and contains the names of both corporations and includes a copy of the signatures of both corporations by their respective officers.

A. My explanation of that is—I desire to have an opportunity to say that the Secretary of the Railroad Company who attended that meeting apparently did not insert in his minutes the contract which was before the Board at that time. I was personally present at the meeting of the Board when the resolution of that date was adopted, and it is my personal recollection that the contract which was before the 218
Board at that time did not contain the names of the Delaware, Lackawanna and Western Coal Company, and certainly could not, as it was not incorporated, and my explanation of that is, the Secretary got a copy of the contract after it was executed, and in his desire to get everything right, put that in his minutes.

Mr. Kingsbury: I want to read in evidence, from page 7 of the minutes of the Board of Managers, the same meeting, the following resolutions:

"RESOLVED: That an extra dividend of fifty (50) per cent. be hereby declared, payable on July 20th, 1909, to stockholders of record, at the close of business on July 1st, 219
1909.

RESOLVED: That a stock dividend of fifteen (15) per cent. is hereby declared upon the capital stock of this company, payable in the shares of capital stock of this company on the second day of August, 1909, to the stockholders of record, on the fifteenth day of July, 1909."

Mr. Kingsbury: I note in the minutes of the Directors' meeting of October 26th, page 62, a resolution for the declaration of an extra dividend of 35%,

220 payable in the stock of the Lackawanna Railroad Company of New Jersey.

Q. This was stock that had been held by the Railroad Company for some time?

A. The Lackawanna Railroad Company of New Jersey was organized as a cut-off line, reducing the distance of the lines of the Lackawanna. The Lackawanna had leased the Morris and Essex lines and the Lackawanna Railroad of New Jersey was incorporated to reduce the distance through New Jersey to the State of Pennsylvania, to reduce the curves and what not, and that road cost upwards of ten millions of dollars. The money to pay for the road was
221 loaned to the Lackawanna Railroad Company of New Jersey by the Delaware, Lackawanna & Western Railroad Company, and the Delaware, Lackawanna and Western Railroad Company took the stock. All of its capital stock was for the money loaned, the stock was issued for the money when the road was built, and the Delaware, Lackawanna & Western had all of the stock of that company in its treasury, that was distributed as a dividend to the stockholders.

Q. That was a distribution of stock of the Lackawanna Railroad of New Jersey to the stockholders of the Delaware, Lackawanna and Western Railroad Company?

A. Yes.

Q. Where are the termini in New Jersey?

A. From Hoboken to Portland, Pa. There were two roads,
222 the road of the Lackawanna of New Jersey ended at the Delaware River; that was the end of the Jersey line, and a part of the line was constructed from there in Pennsylvania to Portland, which was a part of the Delaware, Lackawanna and Western.

Mr. Kingsbury: I read in evidence from the minutes of November 28, 1911, page 64, a resolution declaring a dividend of 10% which is as follows·

"On motion, resolved that an extra dividend of ten (10) per cent. be hereby declared payable on December 22nd, 1911."

Mr. Kingsbury: I also read in evidence from the minutes of Directors' meeting of January 25, 1912, page 69, a resolution recommending an increase of the capital stock in the amount of $12,000,000, which is as follows: 223

"FURTHER RESOLVED: That to provide moneys for the purpose of such straightening, widening, enlarging, constructing and completing the railroad of this company for the adequate accommodation of the traffic thereon, it is necessary to increase the capital stock of this company in the amount of twelve million ($12,000,000) dollars, and the President and Secretary are hereby directed to call a meeting of the stockholders of this company to be held on the 20th day of February, 1912, at 10:00 o'clock A. M., for the purpose of considering such proposed increase in capital stock." 224

Q. Was this increase afterwards effected?

A. It was not.

Q. What is the present status?

A. The Railroad Company is now engaged in the construction of a long improvement line, reducing the distance, grades and curves in the State of Pennsylvania, between Clark Summit and Halstead, which would cost approximately twelve million dollars. Now, the money to construct that road is being subscribed for by the stockholders and the stock will be issued to stockholders for the money. The stockholders have paid a portion of their subscription and have been given evidence of that subscription by the Delaware, Lackawanna & Western Railroad Company. It pays the stockholders 6% upon the money subscribed, and when they make the last payment upon that stock, the stock will be issued to them. The stock has not yet been issued; they have not paid for it. 225

Q. It has been authorized?

A. It has been authorized.

226 Mr. Kingsbury: I read in evidence from the minutes of the Directors' meeting—I have spoken of this as Directors—I should have said, meeting of the Board of Managers, June 27, 1912, on page 76, the following resolution:

"RESOLVED: That the President be authorized to act for this company in negotiating a new or amended contract with the Coal Company, containing such amendments or changes as in his judgment are necessary to protect the interests of this company."

Q. That is the proposed modification about which you testified in the early part of your examination?

227 A. Yes.

Q. Has any modification been made in the contract?

A. I can only say this, in regard to that, the President of the Railroad Company has written a letter to the President of the Coal Company insisting that after a certain date, I think August first of this year, it will insist upon being paid an additional compensation for its coal, and the President of the Coal Company, I don't think has formally agreed to it as yet. It is a matter of difference between the two companies. It will be decided substantially along the lines of the demands of the Railroad Company in connection with certain other matters of difference now pending between the two companies. It has not been brought to a conclusion.

228 I guess there is certain information to be obtained, and when they agree upon certain other matters, which will be within the next two or three weeks, it will be thrashed out or sent to an arbitration board under that agreement.

Q. These negotiations are pending between the Presidents of the two companies?

A. Yes, entirely.

Q. The President of the Coal Company is Vice-President of the Railroad Company?

A. Yes, but very much more President of the Coal Company than as Vice-President of the Railroad Company.

229

Mr. Kingsbury: I read in evidence from the minutes of the meeting of Board of Managers, of December 26, 1912, page 91, a resolution, as follows:

"RESOLVED: That Messrs. Wm. Rockefeller and George F. Baker or either of them be and they are hereby appointed as the Nominating Committee."

Q. These gentlemen have been for several years almost invariably the Nominating Committee?

A. That I could not say; they have been frequently the Nominating Committee. I could not say that, I am not a member of the Board. If it appears in the minutes, I will take your word for it. If you say so, I will answer yes to that question.

230

Q. Do you know whether or not any book of minutes of the Executive Committee has been kept as distinct from the minutes of the Board of Managers?

A. There is a minute book of the Executive Committee.

Q. Will you let me see it for the same period of time?

A. Your question asked for any action of the Board of Managers after the incorporation of the Coal Company. I looked through its minutes to see what there was in that regard, and the only resolution of the Executive Committee, after the formation of the Coal Company, is a resolution in connection with the same matter as that resolution which you read of the Board of Managers; I think that was about recommending the modification of the contract. There might be some matter in connection with the Executive Committee prior to the formation of the Coal Company. If you want to look at that, I will get the minutes and let you look it up.

231

Mr. Kingsbury: If there is anything that refers to the coal sales department of the Railroad Company, I should like to see it.

By Mr. Coudert:

Q. Mr. Jenney, there has been some testimony as to trestle, spurs, etc.; could you describe in some detail what

232 exactly is understood by these trestles, and what their function is?

A. In order to market coal at retail it is necessary for the retail merchants to have places where coal can be stored which are both convenient for the loading of coal into wagons, facilities for distribution in the retail market, and also convenient to be reached by the railroad by track. In order to serve both purposes a trestle is constructed adjacent to the railroad, and a track runs from the railroad on top of the trestle from which cars are dumped into the trestle which consists of pockets of various sizes holding the different sizes of coal. Those pockets are large bins which run from the track down, for different
233 sizes of coal, one for egg coal, one for grate coal, and one for pea coal, and what not, and the wagon or automobile truck can be driven in underneath one of these pockets and an automatic device enables the coal to be loaded into that wagon or truck without labor; that is a trestle, a retail trestle.

Q. Do the tracks run right over the trestle?

A. Up on top of the trestle and the wagon comes underneath.

Q. And the car goes in and is switched out?

A. It goes right around, is switched in and switched back, and no retail merchant can sell coal profitably, except on a very small scale without having a trestle. A large proportion
234 tion of retail trestles used in the anthracite business are owned by the retail dealer, a large proportion, but there are some trestles which were constructed by the Railroad Company in order to get into a retail market with its coal at points where there were no trestles.

Q. Now, before the Railroad Company owned these trestles and operated them, could anybody go there and buy this coal from the trestles?

A. Yes.

Q. Without buying your trestle?

A. Yes, we have a lot of trestles which we had, and the Coal Company now has a lot located at points which are not

the trestles of any individual dealers which you may call wholesale or jobbers' trestles, where any one who wants to buy coal in large lots may go there and get the coal at the trestle, back their wagons down there, and dealers come there and get coal and sell it. 235

Q. Now, then, when independent shippers, prior to the organization of the Coal Company, shipped over your road, did you allow them to carry the coal right up on your trestles and store it there?

A. If it was a trestle which was owned and operated by us none of his coal would come there because he wouldn't sell us any coal for that purpose.

Q. Where would this coal go?

A. He would sell his coal to some dealer in that town. 236

Q. Suppose he had no trestle?

A. If the dealer didn't have the trestle he wouldn't buy the coal. There are lots of dealers who sell coal without having any trestle, by simply dumping it on the ground.

Q. When the Railroad Company owned the trestle could any independent ship his coal and put it in the pocket?

A. That would be possible but not practicable. You couldn't have a trestle in which John Smith's coal was kept separate from somebody's else. The big pockets hold a good many tons of coal, and it would be impossible to furnish trestle facilities for a dozen or more shippers of anthracite coal.

Q. So that to deal in coal on any considerable scale the dealer must own his own trestle and cannot rely on the use of trestles owned or controlled by the railroad? 237

A. All owners do that kind of business, Mr. Coudert, have a little business where they sell a dealer who does not have any trestle. If they wanted to engage in retail business they would have to construct trestles at different points, and what not, and ship coal to those trestles and sell to dealers who would put it in wagons, if they wanted to go into that class of business. I think very few operators care to go into that business. It would require the expenditure of a large sum of money.

238 Q. What do they do?

A. They generally use a trestle, sell to the dealer, somebody located nearby would own a trestle and the coal for the independent dealer would be shipped over the railroad to his trestle.

Q. And where the Railroad Company own these trestles they were really the railroad's terminal facilities, were they not?

A. They were part of the facilities. I don't know that you can call them "terminal facilities."

Q. As such facilities, were they opened to any shipper?

A. No, indeed, that wouldn't be practicable, as I understand the facilities were the facilities which the Railroad
239 Company had in its capacity as a seller of coal.

Q. And where the Railroad Company had a trestle and no one else had them the Railroad Company then had a complete control of the coal terminal?

A. So far as a sale of retail coal is concerned, yes, but there was nothing to interfere with anybody who wanted to get a carload of coal, they could buy a carload and have it shipped to that vicinity and take it out of the car the same as anything else might.

Q. Would they take it up on the trestle?

A. It wouldn't go on the trestle, it would be delivered on the side track, and they would come there with a wagon and
240 get it out of the car.

Q. That would be considerable more work and expense than where there were trestle terminals?

A. As far as the labor goes it would be considerably more, but that individual would not have to put up the money to construct a trestle or keep it in repair.

Q. These trestles are expensive things?

A. They are, sir.

Q. So that as a matter of fact, by reason of the possession of these terminal facilities the Railroad Company had an enormous advantage over individuals?

A. That depends on conditions, it might be an enormous

advantage or a disadvantage, the conditions of the trade, and 241
operation of the business from time to time, questions of that sort. If an individual competitor did business on a large enough scale and had sufficient customers at any particular point, it might justify him in expending the money to put up a trestle, it is simply a question of business.

Q. Analagous to the building of a terminal for a railroad?

A. I wouldn't hardly say that, because they are not engaged in the railroad business, but just like any other business of the same sort, like a man engaged in the shipping of grain, if he is a big enough man and his business warranted he might go on and put up an elevator of his own. I notice in my testimony that I stated that I should assume that no more than three per cent. of the coal 242
sold by the D., L. and W. Coal Company was sold at noncompetitive points, at points solely reached by the lines of the D., L. and W. Railroad. I have since investigated that question, and I found out what would be strictly noncompetitive points; in other words, points reached only by the lines of the Delaware, Lackawanna and Western Railroad Company. It is limited to points in the Pocono Mountains, from Northumberland, Pennsylvania, to Moscow, Pennsylvania, and from Clark's Summit to New Milford, and Willards, New York to Oxford, Chenango Bridge up to Blodgett's Mills, New York, being the only points on the lines owned or leased, or operated by the Delaware, Lackawanna and Western Rail- 243
road Company which are not competitive points. There was in the year 1911, 58,190 tons of coal sold in that territory, being seven-tenths of one per cent. of the coal sold by the Coal Company. I want to say that the total coal produced by all anthracite producers in the year 1911 was 69,955,000 tons, of which amount the shipments of the D., L. and W. Coal Company were only 12 per cent.

Cross examination by Mr. Seager:

Q. Mr. Jenney, Mr. Coudert in questioning you on your direct examination referred to the advantage which the

244 Delaware, Lackawanna and Western Coal Company would have from the possession of these storage plants. Now, it is a fact that the Coal Company pays a rental under the lease for these trestles?

A. Yes, sir, it pays five per cent. upon the value of these trestles per year for rental.

Q. It also pays the entire charge of operation?

A. The entire charge of operation, yes, sir.

Q. The unloading of the coal from the cars and the reloading of the coal and the shipping of it out to the market?

A. Yes, sir, and any expense of maintenance and operation of these coal storage plants as shown by the statement
245 given Mr. Coudert, are borne by the Coal Company.

Q. Is there anything in the way of the producer of coal or the seller of coal acquiring storage plants similar to those in use by the Coal Company?

A. I know of no reason whatever, and so far as the Railroad Company is concerned we would be delighted to assist them in any way as far as we could under the interstate commerce law, and give land just as cheap as we would be permitted on our road for the purpose.

Mr. Coudert: For the purpose of building these trestles?

A. Yes, sir.

246 Q. In answer to Mr. Coudert you stated, I believe, that in places where the Railroad Company had a trestle and they themselves sold the coal to the public, an independent dealer would be obliged to take the coal by wagon. Isn't it true that many so-called independent retail dealers located at many points along the Delaware, Lackawanna and Western line own their own trestles?

A. I think most of the dealers along the line of the Delaware, Lackawanna and Western, numerically and also from the standpoint of the number of tons which they sell a year, are what might be called independent dealers. In other words, they buy their coal from more than one pro-

ducer of coal and are not tied up by contract to any one producer and get their coal according to their market demands. If the public call for Delaware, Lackawanna and Western Scranton coal and they sell that to the best advantage they buy from us, but if they sell other coal to a better advantage they buy from others. They are not in any way tied up, they own their trestles and they buy their coal from anyone they see fit. 247

Mr. Coudert. These trestles are in large cities mostly?

A. Yes, sir.

Q. There is nothing in the point that the Railroad Company could by any device you know of keep out independent dealers at any point? 248

A. Never in the past.

Q. Yes.

A. Or the Coal Company could do today.

Q. Yes.

A. I don't know of any way.

Q. In other words there is machinery provided by the Interstate Commerce law which obliges the Railroad Company to furnish track connections for any such facilities?

A. Absolutely.

Q. Then it becomes simply a question of whether a dealer has trade enough or money enough to provide himself with a trestle?

A. That is all, whether he is willing and justified in putting up the money his competitor has. 249

Q. So that in view of the changes you have now stated on cross examination would you say the Delaware, Lackawanna and Western Coal Company had any advantage over the independent producer, so-called?

A. Only the advantage which it gets by its being a prosperous concern and having capital to enable it to engage in business as against someone who hasn't the same capital, that is the only advantage it has.

250 Q. I mean because of the possession of these storage plants?

A. So far as the storage plants are concerned, I tried to explain that I think from the standpoint of the Coal Company it has a distinct disadvantage, I don't imagine the Coal Company at the start would have taken over these storage trestles except that it was insisted upon by the Railroad Company as one of the conditions of this contract.

Q. Now, it has been suggested upon the record that the Delaware, Lackawanna & Western Coal Company largely uses the Delaware, Lackawanna & Western Railroad in making the shipments of coal, there is an explanation of that fact as to a large part of the tonnage, I take it. Will you
251 give an explanation of that?

A. So far as all of the Delaware, Lackawanna & Western coal is concerned, that is produced by the Delaware, Lackawanna & Western Railroad Company, as I endeavored to explain on my direct examination, practically all of that coal is sold either at New York or at line points of the Delaware, Lackawanna & Western Railroad, or at Buffalo, or shipped from Buffalo to points west by boat, therefore it is all sold at points reached by the D. L. & W. lines. Now, the tariff rate of the D. L. & W. to all these points is not less than the tariff rate of any other company. I think the Pennsylvania has a lower tariff rate to some of these points. In the event that any of this coal was shipped over any other
252 line than the D. L. & W., it would be necessary for the Coal Company to pay the tariff rate of the Railroad Company over whose line that coal was shipped, and for the movement of that coal from the colliery to the other railroad, so that as to all of the coal sold at New York Harbor or at line points on the Delaware, Lackawanna & Western or at Buffalo, to be shipped west, it would be cheaper for the Coal Company to ship that coal over the Delaware, Lackawanna & Western than over any other railroad.

Q. Now, you spoke this morning of railroads in competition with the Delaware, Lackawanna & Western for tonnage

in the coal region, but you didn't mention the Pennsylvania. 253

A. Didn't I; the Pennsylvania is in active competition.

Q. The Pennsylvania gets coal from the region about Kingston; a large tonnage, which originates on the Lackawanna?

A. The Pennsylvania is in active competition with us upon a good deal of coal formerly shipped over the D. L. & W. now shipped over the Pennsylvania.

Q. The Central Railroad of New Jersey is also a competitor?

A. I didn't know the Central Railroad of New Jersey was a competitor.

Q. Having a rate from the Taylor territory?

A. Yes, I think that is right, I think the Jersey Central 254
does touch a region which we also touch.

Mr. Coudert: You mean by competitor, having spurs running into the same mines?

A. The same as we have, correct, a road that reaches a colliery by direct connection, the same as we do, is a competitor.

Q. Otherwise you don't consider them a competitor?

A. Yes, a railroad, Mr. Coudert, which does not reach a colliery by direct connection, may become a competitor if it is willing to pay the switching charge and carry the coal for your price.

Mr. Coudert: May not any of them run in this con- 255
necting track, they have a right I believe to put in a connecting track to any colliery?

A. That depends on the circumstances, as to the ownership of the track. If the track is owned by one railroad, another railroad would not have the right to use that track, but would have to pay the railroad a switching charge. If, on the other hand, the track was owned by the colliery then any of the companies could run over that track without paying any switching charge.

256 Q. Those other railroads can put in tracks to your collieries in pursuance of some legal right?

A. What I mean by that is, collieries located on our line. Those other railroads can put tracks into collieries located on our lines with the assent of the owner of the colliery.

Q. So that all that is necessary is the assent of the colliery company for any railroad to run in another track?

A. Assuming that it reaches land owned by the colliery, if it does not reach that colliery it may have to get a right of way by crossing land owned by other individuals between the railroad and the colliery.

Q. Your road and the others have right to condemn for that?

257 A. So far as our charter goes we have a right to condemn for such tracks, we haven't in some states, we have in Pennsylvania.

By Mr. Seager:

Q. In answer to Mr. Coudert, on your direct examination, you made the statement, or assented to his statement rather, that if the Railroad Company gave six months' cancellation notice under the contract the Coal Company would be coalless, without coal?

A. Yes, sir.

Q. In the first place that is not hardly so, it always has some coal on hand?

258 A. Well, Mr. Seager, the Coal Company would be able to dispose of the coal which it had on hand during the period of six months, and my recollection is, that under the terms of the contract, any of the coal which it had on hand, at the expiration of six months, it would be required to tender back to the Railroad Company under the terms of the contract, and during that period of six months the Coal Company would have no difficulty in arranging for the purchasing of coal from others.

Q. You further stated that the Coal Company did not absolutely depend upon this contract for its existence, as

seemed to be thought by Mr. Coudert, and you mentioned the 259
fact that it had acquired various properties for handling coal other than the properties which it had rented?

A. Yes, sir.

Q. I call your attention to the contracts which the Coal Company had entered into with various large fuel concerns of the Northwest?

A. The Coal Company is making contracts now with different agents for a long term of years, I have approved a number of them, to supply these agents in the West, with coal under contract at least for a term of five years, regardless of the terms of this contract.

By Mr. Coudert:

Q. Isn't it a fact, Mr. Jenney, that the freight rates are 260
practically the same on the railroads you mentioned as competitors?

A. I wouldn't want to give you the exact rates, but they vary. The Pennsylvania road is the lowest, the Lackawanna is next, the Erie, and Ontario and Western rates are the same. Some are larger than our rates. There is quite a little difference between them. I should think the entire difference between the mines to tide water would not exceed twenty-five cents a ton from the different collieries.

Q. What does the phrase on page 8 mean: "with the exception from Taylor to Tidewater?"

A. Well, a concern engaged in washing coal, not a 261
miner of coal, engaged in the washing of coal and in the sale of small sizes of coal brought a proceeding against the Delaware, Lackawanna and Western Railroad Company before the Interstate Commerce Commission, alleging that the rates from its washeries located at Taylor, Pa., to tidewater, were excessive. As a result of that inquiry the Interstate Commerce Commission reduced the rates of the D., L. and W. from Taylor to tidewater and those rates in compliance with the orders of the Interstate Commerce Commission were reduced by the Delaware, Lackawanna

262 and Western Railroad so that the rates from Taylor to tidewater on coal are lower than the rates from other points.

Q. You have spoken of the disadvantage to the Coal Company of taking over the large storage plants of the Railroad Company, was that disadvantage explained to the Board of Directors of the Coal Company when they made the contract?

A. No, sir.

Q. It was not discussed with them in any way?

A. No, but it was fully known to the President of the Coal Company.

Q. Nevertheless with those disadvantages in his mind he
263 sacrificed his company?

A. I wouldn't say sacrificed it, I think he made a very good contract, because he got the coal of the Delaware, Lackawanna and Western Railroad Company, which is the easiest marketed coal of any coal produced in the anthracite region, and was known to the trade, consequently the coal of the Delaware, Lackawanna and Western Railroad Company is the easiest sold of any coal produced and he felt in getting that coal he was getting a pretty good asset.

Q. And that was the asset?

A. They took over some disadvantages, such as the operation of those storage plants in order to get the sale of that coal.

264 Q. To lose the sale of that coal would be a corresponding disadvantage?

A. It certainly would.

Q. And would leave him, with the exceptions to which you have just testified, on cross examination, would leave the coal company high and dry?

A. No, it would not leave them high and dry for one thing, Mr. Coudert, which in my judgment is the greatest asset of all, the good-will of the name of the Delaware, Lackawanna and Western, as a seller of coal, no one could take that away from them, no one else could get that name, they could get the contract to ship from the East all through the West and buy somebody's else coal and sell it

as Delaware, Lackawanna and Western Coal Company's, and in my judgment all they would have to do would be to get the coal and do business just as they do today 265

Q. And in doing that they would be perpetrating a fraud on the public?

A. I don't consider that a fraud on the public, this good-will that they obtained could not be taken away from them by reason of the cancellation of this contract.

Q. If you were forced to reduce that Taylor rate other roads must be too high?

A. The Commission is to investigate the anthracite rate. It starts this month.

Mr. Kingsbury: The rates in the region of your mines? 266

A. I regret to say that is so, sir.

Q. Speaking of the value of this contract to the Coal Company. I understand that there was a drop of one hundred and fifty points in the stock, as you testified?

A. One hundred points.

Q. Was it due to the losing of the contract?

A. I can't say what it was due to, except that it was due to the fact that the Government was after us. They evidently seem to want to put a quietus on any profitable relations that now exist in the United States.

Q. Between the two companies?

A. Anything that is profitable the Government seems to want to put a quietus on. 267

Mr. Ball: The Coal Company reserves the right to further examine the witness.

JOHN F. BIRMINGHAM, a witness produced on behalf of petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Coudert:

Q. Are you connected with the Delaware, Lackawanna & Western Railroad Company?

268 A. Yes, sir.

Q. What is your position?

A. I am Secretary to the Vice-President.

Q. How long have you been with the Railroad Company?

A. Twenty-two years.

Q. Will you mention in a general way the various capacities in which you have served?

A. For about nine years I was working all through the general auditor's office, and after nine years I was transferred to the coal department of the Delaware, Lackawanna & Western Railroad Company. I worked on the sales account until in turn I became the general bookkeeper of the coal sales department. That had to do principally with the sales
269 or accounts pertaining to coal sales. Then I was made chief clerk and secretary to the Vice-President with full charge of all the coal sales accounts up to the time of the formation of the Delaware, Lackawanna & Western Coal Company, then I was appointed auditor of the Delaware, Lackawanna & Western Coal Company.

Q. Did you continue to do what you had practically been doing before?

A. No, after the formation of the Coal Company I gave most of my time to accounting and governing the sales. In fact, everything pertaining to the accounts and records of the coal sales company because it was passed on the same as any outside operation distinct from the railroad company, that
270 is as far as the accounts and records were concerned.

Q. Did anybody take the place you occupied theretofore with the sales department. Did anybody take a corresponding place in the Coal Company?

A. That dispensed with the sales end in the Railroad Company by going into the Coal Company. What I mean by that is that the position I occupied with the Railroad Company was as far as the coal sales were concerned, all that portion of the work, was done by the auditors of the Railroad Company and the auditors of the coal mining department.

Q. So that the work that you had theretofore done was

divided, the sales going into the Coal Company and the other part to the audit department? 271

A. Absolutely, yes, sir.

Q. When did you first hear of the plans to form a coal company?

A. I would say it was probably June, 1909, I think it was around that period, the early part of 1909 that it was discussed. The question came up in connection with getting out some figures. In other words the organizing of the sales company, and I was asked to work up certain figures relative to what the capital of that company might be in order to handle the sales that we had been handling in the past.

Q. What do you base those figures on?

A. Well, the principal thing that it had to be based on, as far as I could see, was the coal on hand, the largest tonnage on hand at any one particular period of the year, and if my memory is correct on that, it was about December, 1908, that we had on hand about 1,300,000 tons of coal, the various sizes brought different prices, and there were eight or nine different sizes, and we based it at practically $6,600,000. 272

Q. Of capital?

A. Yes, sir.

Q. And that is the way that was manipulated?

A. Yes, sir. That is how we arrived at it as far as I can give you. I can give you a line as to how we based it on that particular amount. Because of 1,330,000 tons in October, 1908, and we would base it at what the coal would value at, so in the Fall and October it would have been about $6,900,000. 273

Q. Of capital?

A. Of capital.

Q. To pay for it?

A. To pay for it. Now, in connection with that I might add that it developed that the quantity of coal on hand increased from May until about October, so that in October you have the largest amount of money invested in coal unsold, and it was thought necessary to see what would be

274 needed to carry the whole period and we made up those figures.

Q. And the Coal Company has been very prosperous since you became auditor?

A. Yes, I think so.

Q. When did you begin drawing a salary from the Coal Company?

A. August, 1909, as soon as it was formed.

Q. And you also draw a salary from the Railroad Company?

A. Yes, sir.

Q. And you have been in both offices continuously ever since?

275 A. Yes, sir.

Q. Coming back to the formation of the Coal Company, Mr. Birmingham, you have been asked to prepare figures, at whose request was that?

A. I don't know whether it was Mr. Jenney or Mr. Truesdale, or Mr. Loomis.

Q. One of the gentlemen, either Mr. Jenney, Mr. Truesdale or Mr. Loomis?

A. I couldn't recall just which one. There was some little conversation in connection with it and I was asked to get up some figures.

Q. You had several conferences with them?

A. Not after that, Mr. Loomis would, just after the fig-
276 ures were prepared, follow it up further and reported that practically $6,500,000, or whatever it may be, would be the amount of capital.

Q. Did they explain to you the reason for the formation of a separate company to care for the sales end of the business?

A. No, I don't think any explanation was needed, it was easy to see what was in the wind, in the newspapers, etc., so I think I understood it.

Q. It was obvious that something had to be done?

A. I think so.

Q. All you did in connection with it was to prepare these 277
figures and report that back to the officers of the Company?

A. That was all.

Q. And to take what further instructions they had to give you?

A. Yes, sir.

Q. Did you subscribe for the stock of the Coal Company?

A. Yes, sir.

Q. You exercised one of those options?

A. Yes, sir.

Q. Were you a stockholder in the Railroad Company too?

A. No, I am sorry to say.

Q. And what functions do you today perform in con- 278
nection with the Railroad Company as distinguished from the Coal Company?

A. Principally with affairs connected with the mining operations of the mines.

Q. You still look after those?

A. To a certain extent, very little.

Q. In what way? Do you have charge of the books as to the mining of the coal?

A. No.

Q. What do you do in connection with that, is that part of your duty?

A. Principally in connection to getting after such points as Buffalo, tidewater, and see that the cars are released in order to keep all the various mines going with empties, 279
keep empties supplied at the mines.

Q. You keep track of the cars?

A. No, just where I see that we have an accumulation of cars at Buffalo, or tidewater, for instance, we simply keep after the various coal pockets at Buffalo, after the Coal Company to have the cars released, and the same at tidewater.

Q. Do you travel around to do that?

A. No, sir, just from the reports.

Q. The reports you get here?

A. Yes, sir.

280 Q. Can you tell me as to when a ton of coal mined from the Railroad Company's mines is turned over to and becomes the property of the Coal Company?

A. Just as soon as it is loaded in the cars and billed to the Coal Company, just as soon as it is loaded on the cars the bill is sent to the Coal Company.

Q. When does that billing take place, you are familiar with that, with the accounts, you know how the books are kept?

A. That comes under the Railroad accounts and I don't have any direction of that.

Q. You have nothing to do with that?

A. Not with the transportation of coal or the billing of
281 empties or anything of that kind.

Q. What else do you do in connection with the Railroad Company in addition to keeping track of the congestion of empty freight cars?

A. Any matter that might come up in conection with the requisition for equipment for the mines, and such materials for operating the mines, all comes through Mr. Loomis' hands, and of course I see that that is followed up through the purchasing agent, etc.

Q. You are the connecting link—not to say the missing link—between the mining department and the sales department?

A. That is practically it.

Q. And you attend to both of them?
282

A. To a very limited extent, so far as the Railroad is concerned, but my time is principally taken up with Coal Company's matters.

Q. You mean then that Mr. Loomis looks after the mining end of the Coal Company's business?

A. Yes, sir.

Q. He generally directs what takes place in connection with the mining?

A. The coal mined?

Q. And you assist him in that?

A. To a very limited extent, as far as the coal mined is

concerned, as I have stated before most of my duties are 283
connected with the Coal Company.

Q. Were you familiar with the mining end of the matter before the formation of the Coal Company?

A. To a very limited extent. I always devoted most of my time to the coal sales, the coal sales between the office and our general sales agent and such as that.

Q. So that you have more to do with the mining of the coal now than you had previous to the formation of the Coal Company?

A. More to do?

Q. Do you have more to do with the mining of the coal now and the cars connected with the mining of the coal? 284

A. Not as much.

Q. Just the same.

A. Not as much, because within the last year or so a great deal of that work I have been relieved of.

Q. Within the last year or so, what about prior to the last year or so?

A. Then prior to that time I had more or less to do with the cars, that is the releasing of coal cars at one point, that is at Buffalo and Hoboken, at the intermediate points I had nothing to do.

Q. So that aside from the fact that you draw two salaries where once you drew one, have you had any other reason to notice that there were two corporations where there 285
was once one?

A. I should say I had.

Q. What other?

A. From every part of the records of the Coal Company.

Q. Do you keep more records than before?

A. The records of the Coal Company today are as separate and distinct that I invite the inspection of anybody.

Q. Well, in what respect?

A. Everyway.

Q. Were not the records of the sales company distinct before?

A. No.

286 Q. Or the sales department?

A. No, because all the sales department kept was the tonnage of the coal that had been consigned to agents, and then the amount of money that was due from customers and the agents, and that in turn was transferred to the general books of the Railroad Company, prior to the formation of the Coal Company. The sales department now has nothing to do with that, what the profit may have been was never brought to my attention in any one year on the coal sales department, but since the formation of the Coal Company, I think, at least, I won't say I think, I know, we have every evidence to produce to show that we know what the earnings of the Delaware, Lackawanna & Western Coal Sales Company are.

287 Q. In other words you didn't know what the department was making, but you know what the company is making?

A. Now, we know what the company is making. The coal sales department before, the coal sales department of the Railroad Company simply carried their account of the sales and turned the proceeds over to the Railroad Company.

Q. In other words, I take it what you mean is this, formerly there was one profit realized on the completed operation of mining and selling, now there are two, one on the mining and one on the selling. In other words there are two profits, one on the mining and one on the selling?

A. As far as the coal sales department is concerned that profit is assured, as far as the coal mining department I

288 know nothing about that department, that don't come under my jurisdiction, in any way, shape or form.

Q. Don't you know whether there is any profit there or not?

A. Absolutely not.

Q. Is Mr. Loomis the executive manager of the Coal Company?

A. President.

Q. And he is the man from whom you take all your orders?

A. I wouldn't say that because the general sales agent, Vice-President and general sales agent of the Coal Company

is the man who has more to do with the sales of the coal sales company. 289

Q. And with whom do you come in contact?

A. I come in contact with him a great deal, I wouldn't say more, because I come in contact with both of them, but as far as the sales department goes, I mean by that supervision over the sales of the coal sales company.

Q. You have two offices of your own?

A. No, I have one office.

Q. One office, one room?

A. I misunderstood you, I have one office.

Q. One room or two rooms, do you have a room with the Railroad Company and a room with the Sales Company?

A. Yes, a room outside for the Coal Company's employees. 290

Q. Do you spend your time in the two offices, back and forth?

A. Back and forth.

The Railroad Company reserves the right to cross examine the witness at a future time.

The Coal Company reserves the right to cross examine the witness at a future time.

At this point the taking of testimony in this matter was adjourned to Monday the 17th day of November, A. D. 1913, at eleven o'clock, at the same place.

291

292 The taking of testimony in the above-entitled cause was continued, pursuant to adjournment, before Richard S. Wilson, Esquire, Examiner, at the offices of The Delaware, Lackawanna and Western Railroad Company, 90 West Street, New York City, on Monday the seventeenth day of November, nineteen hundred and thirteen, at eleven A. M.

APPEARANCES:

FREDERIC R. COUDERT, Esquire, and HOWARD THAYER KINGSBURY, Esquire, for the United States of America.

JOHN G. JOHNSON, Esquire, and WILBUR L. BALL, Esquire, for the Delaware, Lackawanna and
293 Western Coal Company.

WILLIAM S. JENNEY, Esquire, and JOHN L. SEAGER, Esq., for the Delaware, Lackawanna and Western Railroad Company.

WILLIAM S. JENNEY, a witness previously sworn on behalf of the petitioner, testified as follows:

Further direct examination by Mr. Kingsbury:

Q. Mr. Jenney, in your examination you gave certain figures as to the production of coal along the lines of the Delaware, Lackawanna and Western Railroad Company during the year 1911. The following computation from those figures is correct, is it not? Total coal produced
294 by independents, 6,335,887 tons; deduct the amount of coal appropriated by independents for their own use, 873,040 tons; sold by independents for their own account, 3,885,613 tons; total deductions 4,758,653 tons, leaving the amount of coal sold by independents to the Railroad Company or the Coal Company during 1911, 1,577,234 tons?

A. Correct, sir.

Q. In certain other figures given by you, certain statistics are given for the Kingston Coal Company. Will you please tell us what the Kingston Coal Company is and what is its relation to the Railroad Company or the Coal Company?

A. The Kingston Coal Company is one of the largest 295
independent producers or miners of anthracite coal in the anthracite region, and it has a mining contract with the Delaware, Lackawanna and Western Railroad Company, under the terms of which the Kingston Coal Company mines from mines owned by the Delaware, Lackawanna and Western Railroad Company for the account of the Delaware, Lackawanna and Western Railroad Company, a large amount of coal yearly. The Delaware, Lackawanna and Western Railroad Company paying the Kingston Coal Company a certain amount for the mining of that coal.

By Mr. Coudert:

Q. Is that under a 65 per cent. contract? 296

A. No.

Q. Will you kindly explain this a little further?

A. The Kingston Coal Company with respect to this tonnage, are merely contractors to mine our coal for our account, at a certain agreed price per ton for mining. The coal is ours before mined and becomes ours after it is mined and is delivered to us by the Kingston Coal Company after being so mined. This is the tonnage which is referred to in the statement as the Kingston Coal Company tonnage.

Q. Then that coal is sold to the Coal Company?

A. That coal, since the formation of the Coal Company, is sold to the Coal Company and is our own coal. 297

Q. You have a written contract to that effect?

A. With the Kingston Company.

Q. Yes?

A. Oh, yes.

Q. Will you furnish us a copy of that?

A. I will be very glad to. We are having a very clean cut litigation with the Kingston Coal Company today over that contract.

By Mr. Kingsbury:

Q. Have you, Mr. Jenney, prepared a copy of the lease

298 of the trestles and other facilities leased by the Railroad Company to the Coal Company, which you said you would produce?

A. I produce a copy, which you may offer in evidence.

Counsel for petitioner offers paper produced by the witness, in evidence, and the same is marked Petitioner's Exhibit P11.

Q. In your testimony, Mr. Jenney, you said that if the contract between the Railroad Company and the Coal Company should be cancelled under the six months' clause, the Coal Company could buy coal from other sources?

A. Yes, sir.

299 Q. From what sources could it buy coal?

A. From January 1st, to October 31st, 1913, the Coal Company actually did purchase from sources other than the Railroad Company, 309,274 tons of coal. I am of the opinion, that if the contract between the Railroad Company and the Coal Company was cancelled today, the Coal Company has sufficient capital, financial ability, to acquire all the coal being produced by the Temple Iron Company, which is about to be sold in the market, under a decree of the Supreme Court, in the Temple Iron Company case, which amounts to several million tons a year. In addition to that tonnage, there are several million tons of anthracite coal a year produced by independents, a large pro-
300 portion of which the Coal Company, in my judgment, could purchase. I do not think that it is at all unlikely the Coal Company could purchase on the basis of this contract, coal from some of the other large coal companies, the stock in which is owned by railroad companies. There might be certain terms with respect to the transportation of that coal, but I think it could be acquired by the Coal Company.

Q. There is not enough anthracite produced by the independent producers along the lines of the Delaware, Lackawanna and Western Railroad Company, is there, to enable the Coal Company to go on doing its present general rate

of business, if it could not get the Railroad Company's coal? 301

A. No, the total amount of independent coal produced along the lines of the Delaware, Lackawanna and Western Railroad Company would be insufficient to enable the Coal Company to market the tonnage which it does now market every year.

Q. So that it would have to go into other fields to acquire its coal?

A. Yes, sir.

Q. And it would then have to acquire special facilities for handling the other coal, in order to enable it to do business as profitably as it is now doing?

A. No, sir, I think not. It might have to do something in that direction. It might have to expend a quarter of a million dollars or something of that sort, for additional facilities, but nothing of any considerable magnitude. 302

Q. Would it not have to acquire property and buildings, trestles, and storage facilities?

A. No, I think not, I can explain that in this way: Take it for the year 1912; the Coal Company sold its coal in the following markets and the following amounts: At Syracuse, New York, 394,000 tons; at Oswego, 161,000 tons; at Montreal, Ontario, 195,000 tons; at Buffalo, 887,000 tons; at Detroit, 352,000 tons; at Toledo, 192,000 tons; at Chicago, 528,000 tons; at Milwaukee, 494,000 tons; at Lake Superior points, 503,000 tons; aggregate shipment at Chicago to other points, going from Chicago by boat, 10,000 tons; Chicago shipments going to other points from Chicago, by rail, 16,000 tons. The Consolidated Coal Company, Toronto, 116,000 tons. Now, that constitutes a large majority of the tonnage sold by the Coal Company, and if you will take these points up in order, you will find that the Coal Company could dispose of its tonnage, if it had it, at these various points, without acquiring any considerable additional facilities. In other words, for instance, at Syracuse, in the first place, most of the tonnage which the Coal Company sells at Syracuse, it 303

304 sells to independent dealers in Syracuse, like Kelly and Peck, etc., who have their own facilities and there is no necessity of acquiring additional facilities at Syracuse to dispose of their tonnage. The same thing is true at various other points. Now, when you go out of the United States into Canada, points like Montreal, when you go to the western points like Detroit and Toledo and Chicago and Milwaukee, and Lake Superior points and Toronto, those are the agencies of the D., L. & W. Coal Company, with which it has contracts for extended terms, and it would require no additional facilities on the part of the Coal Company to dispose of its tonnage at those various points.

305 Q. Does the table from which you have been quoting give the tonnage sold at New York Harbor?

A. No, but I can give you that tonnage. In 1912 there was sold at Hoboken, 1,933,587 tons, the larger proportion of which was small sizes of coal and upwards of 75 per cent. of which, that is, 75 per cent. of the small sizes of coal, was marketed by the Coal Company at New York Harbor points.

By Mr. Coudert:

Q. How about 1911? Have you a statement for 1911?

A. Yes, I have 1910 and '11.

Q. Give those figures also, if you have them there?

A. I would be very glad to put in the record the figures showing the distribution of the coal for these three years,
306 both statements, one, a statement of the tonnage and proceeds therefrom at the four points, Syracuse, Utica and Montreal, together, Buffalo and West, together, Hoboken separated, line points and pockets separated, and the other statement dividing the tonnage between the different points that I have named.

Mr. Coudert: We will offer these in evidence.

Papers referred to are offered in evidence and are marked Petitioner's Exhibits P12, and P13, respectively, and are as follows:

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SALES—TONNAGE AND PROCEEDS.

	1910		1911		1912	
	Tons.	Proceeds.	Tons.	Proceeds.	Tons.	Proceeds.
Syracuse, Utica and Montreal	1,188,298.01	$5,766,970.94	1,129,222.05	$6,171,351.17	1,178,634.11	$6,595,746.57
Buffalo and West	3,113,365.03	19,204,980.52	3,160,558.17	19,619,594.71	3,180,438.09	20,790,756.53
Hoboken	2,500,021.16	7,269,863.51	2,471,888.13	7,392,282.90	1,931,587.13	5,542,300.57
Line Points and Pockets	1,706,834.10	6,380,585.74	1,723,413.11	6,637,235.26	1,630,939.16	6,402,762.47
Fuel, etc.	18,569.02	56,529.13	20,328.09	62,756.76	24,090.08	77,698.56
	8,527,088.12	$38,678,929.84	8,505,411.15	$39,883,220.80	7,945,690.17	$39,409,264.70

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TONNAGE OF COAL SOLD THROUGH VARIOUS AGENCIES.

	Tons 1910	Tons 1911	Tons 1912
Syracuse	525,986	393,933	394,843
Oswego	154,742	158,853	161,135
Montreal	164,829	211,132	195,194
Buffalo—West	879,703	932,992	886,779
Detroit—West	311,908	336,546	351,817
Toledo—West	224,534	227,673	192,745
Chicago, SCS	300,443	282,868	322,402
Chicago, ELH	332,130	317,432	285,910
Milwaukee, ELH	479,085	486,723	494,251
Lake Superior, ELH	370,427	420,175	503,757
Chicago, NWF	149,755	125,642	.....
Cargoes, NWF	24,864	13,157	10,301
Rail, NWF	40,511	17,348	16,011
Cons. Coal Co.	.....	.....	116,463

309

Q. These figures relate entirely to the tonnage of the Coal Company?

A. Yes, this second statement showing the particular points at which tonnage is sold, does not cover all the tonnage of the Coal Company which is covered, however, in the first statement.

Q. That is what I understood. Mr. Jenney, you spoke of the Delaware, Lackawanna & Western coal being the most easily marketed?

A. Yes, sir.

310 Q. Will you explain why, a little more fully?

A. Whether true or not, dealers in coal are of the opinion that the coal mined by the Delaware, Lackawanna and Western Railroad Company is better prepared for market than the coal mined by any other company, more free from rock; is a better burning coal for domestic use and the public generally have the same view, so that there is a greater demand almost everywhere, for Delaware, Lackawanna and Western Scranton coal, than for any other coal, and for that reason it is easier to market Delaware, Lackawanna and Western coal than any other coal. The Delaware, Lackawanna and Western Coal Company has less difficulty in marketing its coal than any coal company in business.

311 Q. How was the amount of the rental stipulated in this lease, namely, $74,407.84, arrived at?

A. There was a conference between the representatives of the Coal Company and the Railroad Company, at which figures had been prepared by both parties as to the value of all the different facilities, which under the terms of that paper, were leased by the Railroad Company to the Coal Company, being facilities owned by the Railroad Company and the value of these facilities, less depreciation, etc., which was agreed upon at that conference. Seventy-four thousand dollars represents 5 per cent. of that value.

Q. That value was the cost of production of the facilities less an allowance for depreciation?

312 A. It was the cost of construction, less depreciation.

By Mr. Coudert:

Q. For the purpose of filling an omission in the record, we now offer a form of the notice sent to the sales agents and by them sent to the trade generally.

Paper offered is marked Petitioner's Exhibit P14, and is as follows:

Office of 313

THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY, NEW YORK.

August 1st, 1909.

In conformance with the decision recently rendered by the United States Supreme Court, declaring that the Delaware, Lackawanna & Western Railroad Company cannot lawfully transport in interstate commerce, coal owned by it, a coal selling company has been organized under the laws of the State of New Jersey, under the name of THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY, and Mr. S. G. Memory is hereby appointed Line Sales Agent of the new coal company, with office at 90 West Street, New York. 314

This should be assurance to the trade that the business entrusted to this Agency will receive the same careful attention in the future as has been given it in the past.

D. E. RUSSELL,
Vice-President and General
Sales Agent.

Approved:
E. E. Loomis,
President.

Mr. Jenney, the witness, continues:

A. The notice to customers which is copied in the record, was sent to all customers who formerly purchased coal from the Delaware, Lackawanna & Western Railroad Company, and whose custom was solicited on behalf of the Delaware, Lackawanna & Western Coal Company. Then the other circulars were sent by the representative men who were appointed in the circular, sales agents, to their particular trade in that vicinity, with a copy of the first circular. In addition to that, I am advised by the President of the Coal Company, which I did not know before and testified that I did not know, that the following circular was sent to all sales agents of the Delaware, Lackawanna & Western Railroad 315

316 Company, under date of July 15th, 1909, and I desire to offer it in evidence.

Paper offered is marked Defendant's Exhibit D1, and is as follows:

THE DELAWARE, LACKAWANNA & WESTERN COAL CO.

90 West Street, New York, July 15, 1909.

E. E. Loomis, President.

TO ALL SALES AGENTS:

Effective August 1st, 1909, all matters appertaining to the
317 sale of this company's coal will be under the direct charge of Mr. D. E. Russell, Vice-President & General Sales Agent. All Sales Agents will please report to, and receive instructions from him.

Yours truly,

E. E. LOOMIS,
President.

Cross examination by Mr. Ball:

Q. It appears from the contract between the Railroad Company and the Coal Company, that the title to the coal mined by the Railroad Company passes to the Coal Company at the time it is loaded on the car at the mines, and you were
318 asked on your direct examination whether there is any other evidence relating to the passing of the title than that contained in the contract. Is there such other evidence?

A. I testified in my examination that there was a slip or waybill which accompanied the coal and I have obtained one of these forms of coal way-bills, which I will introduce in evidence. This form has certain matter written on it in ink, which is not a part of the form, but it was, however, the only form I had in this office.

Q. Will you explain the operation of filling in the blanks?

A. This is the form of coal waybill which accompanies

all cars of coal. Opposite the words "Coal Way-Bill" 319
is a numeral, in this case an "0." It is different for each colliery. Each colliery has its own mark or symbol and the way-bills are printed for each colliery and then the various blanks in those way-bills are filled out and the way-bill accompanies the car of coal as a shipping bill and the way-bill shows the coal to be the coal of the Delaware, Lackawanna and Western Coal Company. In other words, The Delaware, Lackawanna and Western Coal Company is named in the way-bill when it is filled out, as the consignee of the coal.

The paper referred to by the witness as form of way-bill, is offered in evidence and marked Defendant's Exhibit D2, and is as follows: 320

Form T 92

SETTLEMENT GENERAL OFFICE

.....Coal Doors Furnished .....Total Feet

THE DELAWARE, LACKAWANNA & WESTERN R. R. COMPANY.

Coal Way-Bill 0 No. 40

Date .....

Initial ..... Car No. .....

Size of Coal.....

Tons Cwt. 321

Gross .....

Tare .....

Net .....

Weight in Ms.

.....

From Abstract No.

.....

To Date

.....

For Check

.....

322 Reconsigned from Abstract No.

.....

To Date

.....

For Check

.....

Reconsigned from Abstract No.

.....

To Date

.....

For Check

.....

323 Transferred

At ..... 191....

Into Car No..... Initial.....

Unloaded at ..... 191..

Unloaded into ....

Receipted by..... .....

Consignee or Railroad Agent.

See instructions on back.

Mr. Coudert: But there is nothing in this blank to indicate that?

A. Nothing in the blank.

324 Q. You have given some testimony about demurrage charges. Is there a regular demurrage tariff?

A. Yes, there is a regular car demurrage tariff, which I offer in evidence.

Paper referred to by the witness and offered is marked Defendant's Exhibit D3 and is as follows:

CAR DEMURRAGE RULES
ON
ANTHRACITE COAL OR BRIQUETTES

1. All cars containing Anthracite Coal or Briquettes

consigned to and held at Oswego, Syracuse, Utica or Buffalo (including East Buffalo), N. Y., or Hoboken (including Secaucus), N. J., and there trans-shipped by water, or consigned to and held at Oswego, Syracuse, Utica, or Buffalo (including East Buffalo and Black Rock), N. Y., or Port Morris or Hoboken (including Secaucus), N. J., and there reconsigned to other destinations, are subject to the following car demurrage rules: 325

2. Demurrage will be computed on the average plan, allowing an average detention at each such point of five (5) days per car free of charge.

3. The demurrage due from any shipper or consignee shall be determined by adding together the days of detention of all the cars released by such shipper or consignee in any one month, at any one point, and from that sum shall be deducted the product of such number of cars multiplied by 5, the remainder, if any, being the detention days to be charged at the rate of $1.00 per car per day. 326

4. Sundays and full Holidays will not be included in days of detention. When a full Legal Holiday falls on Sunday, the following Monday will be excluded.

5. For purposes of computing demurrage, the record of detention of a car shall begin with the seven A. M. of the day following its date of arrival, and shall close with the twelve P. M. of the day of its release. 327

6. A car will be considered finally released:

(a) In case of trans-shipment, if the duty of unloading rests upon the shipper or consignee under the tariffs governing the shipment, when unloaded into vessel.

Note: The time between receipt of written order for placement and placement by the carrier on the pier will be considered railroad detention, and not charged against the shipper or consignee.

328 (b) In case of transshipment, if the duty of unloading rests upon the carrier under the tariffs governing the shipment, when the shipper or consignee gives the carrier written order to unload into vessel, provided the vessel has registered and is ready for loading and the entire cargo to be unloaded by the carrier into such vessel has arrived at the transshipment point and been ordered by the shipper or consignee for unloading.

(c) In case of re-consignment, when written order for re-consignment is received by the carrier.

7. If the car is transferred by written order to another shipper or consignee at the same point, and by him accepted
329 and transshipped, or re-consigned in accordance with the provisions hereof, the entire detention of the car, before as well as after such transfer, shall be charged to such shipper or consignee.

8. Statements and bills for demurrage shall be made for each calendar month, and shall include the cars released during that month.

Q. Do the provisions of that tariff include a different one for the Coal Company than for any other shipper of coal?

A. They do not, sir. The demurrage rules are the same for all shippers. As to the Delaware, Lackawanna & Western Coal Co. I am informed, the five-day average rule does not
330 apply at the storage plants, but the forty-eight hour rule applies at the storage plants, so that the Coal Company, at these three storage plants I have named, have to unload the cars in forty-eight hours to escape the payment of demurrage.

Q. Have you figures to show the total yearly output mined by the Railroad Company?

A. I have here a statement showing the coal produced by the Delaware, Lackawanna & Western Railroad Company at its mines and washeries, for each year, from the year 1852 to, and including the year 1912. I don't want to encumber the record by putting the entire statement in evidence, but

I desire to show the same in ten-year periods and show the 331
increase in coal mined by the Delaware, Lackawanna & Western Railroad Company from its mines. In the year 1852 there was produced at the Company's mines 59,412 tons; the year 1862, 448,664 tons; the year 1872, 1,731,647 tons; the year 1882, 2,458,394 tons; the year 1892, 3,417,350 tons; the year 1902, 3,106,725 tons; that was the year of the big strike and it therefore is not a fair year to compare. I will give the figures for the year before and the year after. 1901, 5,074,549 tons; 1903, 6,293,226 tons; 1912, 7,431,178 tons. The figures I have given are the figures of the coal mined and exclude the coal washed. We have been engaged in washing coal only since the year 1900 and the coal washed has run from three-quarters of a million to a million and a quarter tons per year. 332

Q. You were asked on your direct examination, whether you had any method of computing the exact percentage of coal located along your lines and owned and operated by others, which the Railroad Company transports and in response to that question you put in a set of figures for certain years; the years 1900, 1909 and 1910. Have you any explanation to make in connection with those figures?

A. That is at page 58 of the record.

Q. Yes.

A. That is a statement showing the shipments of coal for the years 1909, 1910, 1911 and 1900. I don't think the statement is very intelligible without a statement of what it really covers. This statement is a statement showing the total 333
amount of anthracite coal which was carried over the lines of the Delaware, Lackawanna and Western Railroad Company in the years named. In other words, in 1900, the Delaware, Lackawanna and Western Railroad Company carried over its lines the total of five million seven hundred ninety-three thousand, and so forth, tons. 1909 and 1910 it carried a total named in that statement of ten million, and so forth, tons. The figures show the source of that coal, the total amount mined from the Delaware, Lackawanna and Western mines and washed at the Delaware, Lackawanna and West-

334 ern washeries, purchased under fixed contracts; purchased without contracts; mined by the Kingston Coal Company, being the coal which I have explained in my testimony this morning, and last, the shipments made over the railroad of the Delaware, Lackawanna and Western Railroad by other shippers, private shippers and the tonnage of their shipments. As explaining further the shipments of the private shippers over the Delaware, Lackawanna & Western Railroad Company, I had a statement prepared showing the independent operations which are located on the Delaware, Lackawanna & Western Railroad and which are served by two or more railroads and the tonnage shipped by them to market in the year 1910. This statement shows eight separate oper-
335 ations located on the lines of the Delaware, Lackawanna & Western Railroad and gives the names of the railroads serving those operations, D. & H. meaning Delaware and Hudson Company; L. V. meaning Lehigh Valley Company; O. & W. meaning Ontario and Western Company; and D., L. & W., meaning the Lackawanna. This statement shows that from those operations in the year 1910, there was a tonnage of 3,371,245 tons, all of which tonnage could have been shipped to market over any one of the different railroads serving those operations, named in this exhibit, and the table which you asked me about and which was put in evidence, shows that in the year 1910, the total tonnage of private shippers shipped over the Delaware, Lackawanna & Western
336 Railroad, was but 410,000 tons. This exhibit, therefore, which I have offered in evidence, indicates that but a small amount of this tonnage served by more than one railroad, went over the Delaware, Lackawanna & Western Railroad in the year I have named.

The statement referred to by the witness is offered in evidence and is marked Defendant's Exhibit D4, and is as follows:

INDEPENDENT OPERATIONS LOCATED ON D. L. & W. AND SERVED BY TWO OR MORE RAILROADS.

Name of Operations.	Map. No.	Tonnage shipped to market in 1910.	R. R. Serving.
Kingston No. 1 and No. 2..	138–139		
Gaylord	140	1,447,600	D. & H.—L. V.—D. L. & W.
Kingston No. 4.....		534,216	D. & H.—L. V.—D. L. & W.
East Boston	127	166,344	D. & H.—D. L. & W.—L. V.
Black Diamond	126	151,783	L. V.—D. L. & W.
Sibley	80	221,988	L. V.—D. L. & W.—O. & W.
Mt. Jessup	23	193,872	D. & H.—O. & W.—D. L. & W.
Pancoast	33	655,442	O. & W.—D. L. & W.
Total tonnage.....		3,371,245	

Q. Since the organization of the Coal Company, Mr. Jenney, has there been any difference in the amount of coal that has been purchased from individuals?

A. At the time of the formation of the Coal Company in the year 1909 the Railroad Company was purchasing quite a large amount of coal from individual operators. For the year ending October 31st, 1909, the Delaware, Lackawanna and Western Railroad Company purchased from individual operators a total of 1,869,140 tons. This amount has been decreasing from year to year until for the year ending October 31st, 1913, the Railroad Company purchased from individual operators the amount of 503,210 tons only. A large portion of this was its own coal which it purchased back under the 65 per cent. contract.

Mr. Coudert: Are those the contracts forming the subject matter of the pending proceedings at the foot of the decree in the Reading suit?

A. Yes, sir.

Q. I should like to have you show some figures in connection with the magnitude of the business done by the Coal Company including its payment for freight and other important disbursements.

A. I have had a statement prepared for the years 1910,

340 1911, and 1912, showing the payments made by the Coal Company to the Railroad Company for each year for coal purchased, and also showing the amount paid to the Railroad Company for freight together with the amount paid by the Railroad Company of such freight to other railroads. Also the amounts paid by the Coal Company in freights itself to other railroads, and the amounts paid for freights to boats for hauling of coal by water; also the handling charges paid to Western agents the selling charges paid to Western agents and handling charges paid to salaried agents, and the selling charges paid to salaried agents, and I would like to read these figures in evidence for the year 1912. The Coal Company paid to the Railroad
341 Company for the year 1912, for coal purchased, the sum of $19,861,904, and the Coal Company paid to the Railroad Company for freights $13,119,223, of which the Railroad Company paid to its connections $365,733, the total payments for the year 1912 to the Railroad Company was $32,981,127. The total in the year 1911 was thirty-five million, and in 1910 thirty-four and a half million. The total paid by the Coal Company in the year 1912 for freight charges of other roads, west of Buffalo, was the sum of $874,158. For boat freights, $529,106. Handling charges to Western agents, $696,143; selling charges to Western agents, $435,253, handling charges to salaried agents, $61,650; selling charges to salaried agents $98,399;
342 making a total expenditure on account of the above matters by the Coal Company for the year 1912. $35,675,838 in the year 1911, that was thirty-seven and three-quarter million, and in 1910 thirty-seven and a half million. There was paid to other than the Railroad Company by the Delaware, Lackawanna and Western Coal Company, in the year 1912, upwards of $5,000,000, and in the years 1910 and 1911, upwards of $7,000,000.

Q. How much coal does the Coal Company sell at non-competitive points?

A. I desire to put in evidence a statement which I have

prepared of the coal sold at noncompetitive points during 343
the years 1911 and 1912, and by this I mean noncompetitive points so far as other railroads are concerned, not noncompetitive points so far as the Coal Company is concerned, because any other Coal Company by paying the same freight rate as the Delaware, Lackawanna and Western Coal Company must pay over the lines of the Delaware, Lackawanna and Western Railroad, could sell its coal at these noncompetitive points in competition with the Coal Company. They are noncompetitive points only from a railroad standpoint and not from the Coal Company's standpoint. Every point along the line of the Delaware, Lackawanna and Western Railroad Company is competitive from the standpoint of the Coal Company. This statement 344
ment shows that in the year 1911 the total sales of coal at all points located on the lines operated by the Delaware, Lackawanna and Western and only reached by the Delaware, Lackawanna and Western Railroad Company were 58,190 tons, and for the year 1912 but 57,548 tons.

Statement referred to by the witness is offered in evidence and marked Defendant's Exhibit D5.

Statement follows:

345

346 **STATEMENT OF COAL SOLD BY THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY AT NON-COMPETITIVE POINTS—YEARS 1911 AND 1912.**

	1911		1912	
Analomink	433.13		173.09	
Henryville	88.00		50.04	
Cresco	1,800.07		1,977.18	
Mt. Pocono	1,192.08		1,257.05	
Pocono Summit	1,058.12		1,242.16	
Tobyhanna	1,120.08		1,706.15	
Gouldsboro	1,804.03		1,594.05	
Moscow	2,809.03		2,639.01	
		10,306.14		10,641.13
Clarks Summit	6,284.10		5,730.15	
Glenburn	2,427.08		2,354.03	
347 Dalton	1,918.04		1,896.07	
La Plume	448.09		501.02	
Factoryville	2,606.17		2,772.10	
Nicholson	3,996.04		3,926.13	
Foster	1,552.13		1,497.15	
Kingsley	833.01		838.11	
Alford	169.12		236.13	
Hart Lake	106.12		130.07	
Tiffany	59.07		29.00	
New Milford	1,894.12		1,938.15	
		22,297.09		21,852.11
Willards	4,188.12		4,912.19	
Greene	257.15		238.01	
Brisbin	58.04		28.11	
Coventry	4,274.06		3,715.03	
Oxford	.....		.....	
		8,778.17		8,894.14
Chenango Bridge	787.03		833.02	
348 Chenango Forks	802.11		742.01	
Itaska	96.10		95.14	
Whitney Point	2,267.02		2,265.13	
Lisle	1,064.07		965.15	
Killawog	339.08		520.01	
Marathon	3,196.17		3,042.05	
Messengerville	72.04		122.18	
Blodgett Mills	390.00		310.16	
		9,016.02		8,898.05
Little York	687.19		585.10	
Preble	761.02		751.11	
Tully	2,966.10		3,037.16	
Apulia	2,532.10		2,038.07	
Onativia	843.08		847.16	
		7,791.09		7,261.00
		58,190.11		57,548.03

Q. How about the price of coal at those points? 349

A. The price of coal at these points differs in no respect from the price of coal at points where they are served by two or more railroads, besides the D., L. and W. or by another railroad besides the Delaware, Lackawanna and Western, except that the freight rate to those points varies.

Q. You have testified that after the strike in the anthracite coal region, the independents were able to and did get higher prices for their coal than either the Railroad Company formerly or the Coal Company could get for its coal. Is that a condition which has been generally true when there is an unusual demand for coal?

A. Whenever there is an unusual demand for coal so that 350
the demand for coal is in excess of the supply the independent producers get what is known as a premium on their sales of coal. I do not think it is important to put this exhibit in evidence, but the Government may look at it if it so desires. I have had this statement prepared to show illustrations of sales of coal by different independent producers of coal located on the lines of the Delaware, Lackawanna and Western to independent dealers located at various points where the Delaware, Lackawanna and Western Coal Company sells its coal, and this statement shows the dates at which the various sales of coal had been made in the years 1912 and 1913 by independent producers to dealers such as I have named, giving the size 351
of the coal and the weight of the coal sold, and price per ton at which that coal had been sold, the Delaware, Lackawanna and Western Coal Company's selling price at that time in that particular market, and the premium received by the independent concern on its sales of coal. This statement contains, I should say, upwards of 250 instances of that sort where the premiums have run from a few cents up to the excess of two dollars a ton, and that illustrates the testimony which I have given.

Q. Is that a highly unusual condition?

352 A. Not at all. Today in the market the independents are selling their coal because of the unusual demand at a premium over what the Delaware, Lackawanna and Western Coal Company gets for its coal.

Q. Upon the formation of the Coal Company was there a complete separation of the business and accounts and operation of the coal business from that of the Railroad Company?

A. When the Coal Company was formed the business formerly conducted by the Delaware, Lackawanna and Western Railroad of selling its coal in the market was taken over by the Delaware, Lackawanna and Western Coal Company, and from that time on the Delaware, Lack-
353 awanna and Western Railroad Company has had nothing whatever to do with the marketing of its coal. It sold all of its coal except such as it appropriated for its own purposes or permitted its mining employes to use to the Coal Company at the mines. It withdrew absolutely from the selling of coal. The Coal Company was formed with a separate organization from the top to the bottom. A separate Board of Directors, separate officers and separate books. It was just as distinct a corporation from the Railroad Company as that of any other shipper along the lines of the Delaware, Lackawanna and Western Railroad, with the exception of certain individuals who are employed jointly by the two companies, and with the excep-
354 tion of the relationship between the two companies in their Board of Directors and their stockholders. In their actual management, keeping the books and accounts and whatnot the corporations are just as separate and distinct as any two corporations could be. The Delaware, Lackawanna and Western Coal Company has its own office, it keeps its own books. When the Coal Company was formed it opened up an extensive set of books pertaining to the sales which were not formerly kept by the Delaware, Lackawanna and Western Railroad Company. The Delaware, Lackawanna and Western Coal Company deposits its funds separately in its own name in banks which it selects and all of its

books pertain solely to its own business. Its earnings are 355
figured from such books and the profits from the business are distributed by the Delaware, Lackawanna and Western Coal Company to its own stockholders, except the money which it retains and shows on its books as a surplus. The sales department of the Coal Company is now, with the exception of certain supervision by Mr. Loomis, President of the Coal Company, under the supervision of Mr. Russell, Vice-President and general sales agent, and all of the sales agents under Mr. Russell wherever located, are today, and since the organization of the Coal Company have been, employed by and work exclusively for the Coal Company and have nothing whatever to do with the Railroad Company. All the bookkeeping force in the general office of 356
the Coal Company work solely for the Coal Company, and are paid solely by the Coal Company. The minute book of the Board of Directors of the Coal Company I have offered to counsel for the Government and they have examined the same and have introduced in evidence such portions as they desire to, and all of the books and accounts of the Coal Company I am entirely willing that counsel for the Government should look over in order to ascertain the complete separation of the business of the Coal Company from that of the Railroad Company.

Q. To what extent are the trestles owned or controlled by the Coal Company?

A. I have had a statement prepared of the total num- 357
ber of wholesale and retail coal handling facilities, such as trestles, elevators, etc., located along the line of the railroad, owned, leased and operated by the Delaware, Lackawanna and Western Railroad, and I find that the grand total of such trestles amounts to 282, of which total there are owned by independent dealers 246, owned by the D., L. and W., 36, a percentage of 12.76 owned by the Delaware, Lackawanna and Western, and 87.24 by independent operators.

Mr. Coudert: Owned by the Delaware, Lackawanna and Western Railroad and leased to the Coal Company?

358 A. Owned by the Railroad and leased by the Coal Company.

Mr. Coudert: And what was the respective capacity of those trestles?

A. Why some of the Delaware, Lackawanna & Western trestles owned by it, are larger, I should say that a half a dozen of the Delaware, Lackawanna & Western trestles were larger than any of the others.

Mr. Coudert: At your convenience will you supplement your statement by giving a statement showing the corresponding capacities of those owned and not owned by the Coal Company?

359 A. I could get that but it would take some time, I would have to get the capacities of the independent trestles located along the line of the road, and in order to get that I would have to go to them and get it from them, we haven't that. There are about a half a dozen trestles larger than any trestle owned by any independent operator, but I should say the balance of the trestles of the Delaware, Lackawanna & Western compare approximately with the large trestles owned by the dealers. I can give you an approximation or guess—I can give you an approximation of the capacities compared with the independent trestles, but I couldn't give it to you accurately without two or three weeks' time and having a careful investigation made of it.

360

Mr. Coudert: Well, if you can get me a statement which you yourself are willing to state is a reasonable approximation, I will accept it.

A. I will do the best I can in that regard.

Further cross examination by Mr. Seager:

Q. In speaking of the trestles leased by the Railroad Company to the Coal Company you left open to inference that the Coal Company used all of those trestles, is that true?

A. No, there were a lot of coal trestles owned by the Railroad Company which are leased to individuals, that is, lo-

cated on the Delaware, Lackawanna & Western Railroad Company's land leased to individuals, and there are a lot of coal trestles owned by the Delaware, Lackawanna & Western Railroad which are open to the public, not used solely by the Delaware, Lackawanna & Western Coal Company. 361

Mr. Coudert: There are a lot of trestles which the railroad allow all dealers in coal to use?

A. Yes, a lot of them. These are merely coal facilities owned by the Railroad Company and leased to the Coal Company, but are not operated by the Coal Company exclusively and any dealer can come and get coal.

Mr. Coudert: And this might, if the Coal Company so desired, be done with all the trestles? 362

A. No, I don't think you understand me, what I mean to say is, that there are some trestles, for instance, that the Coal Company uses for the storage of its coal and sale of coal, just as a retail dealer would, there are others which the Coal Company uses as a distributing trestle to dealers.

Mr. Coudert: But if the Coal Company so desired it could use all of these trestles as such distributing trestles?

A. It uses most as distributing trestles and those not used are too small for the purpose, but how many of these trestles there are I couldn't tell. There are a number of the trestles of the Coal Company too small to be used in the handling by it of coal for sale of coal, but a very few. 363

Mr. Coudert: When the Railroad Company had the trestles and operated them it also used them in that way.

A. The same as the Coal Company does now.

Mr. Coudert: Some were exclusively for its own coal, and others were for storage?

A. From others it sold coal stored therein to dealers.

364 Mr. Coudert: Did it allow dealers or independents to use these trestles?

A. I understand that would be a practical impossibility. You could not mix in one trestle the coal of one producer of coal with that of another.

Mr. Coudert: So that all of the coal in the trestles, until actually sold by the Coal Company, is the property of the Coal Company?

A. Yes, sir.

Q. Well, now, the point I am getting at is this. Along the line of the Delaware, Lackawanna & Western Railroad Company there are very many trestles and a very large proportion of all of those leased by the Coal Company, which are occupied by dealers?

365 A. Yes, sir.

Q. And are so used by dealers as distinguished from Delaware, Lackawanna & Western Coal Company for retailing coal?

A. Yes, the lease shows that. Here in this lease you find Schedule A, being a list of coal facilities owned and being operated by the Railroad Company at the time this lease was turned over to the Coal Company, which were thereafter owned and operated by the Coal Company. You will see from this that very few trestles were in fact operated by the Coal Company under the terms of this lease and had been 366 previously operated by the railroad, and Schedule B was a list of the facilities leased to and operated by individuals, and you will see from this that practically all the trestles now located along the line of the Delaware, Lackawanna & Western Railroad Company were at the time of this lease leased by the Railroad Company to various independents. This Schedule B shows the nature of the facilities so leased, for instance, at Alexandra there is leased to J. H. Barnes land as site for a coal bin. J. H. Barnes owned the coal bin and we leased to him the land. So you can go through Schedule B and you will see that at practically all the points along the line of the Delaware, Lackawanna & Western Rail-

road it had leased these trestles, either land for the trestles or the land and trestles or storage bins, or what not, or coal pockets to individuals, and all of these leases were turned over to the Coal Company as a part of this lease. 367

By Mr. Kingsbury:

Q. That is to say, the Coal Company leased these facilities from the Railroad Company subject to the outstanding leases to dealers?

A. Correct.

Mr. Coudert: And could the Coal Company or the Railroad Company prior thereto use these facilities for its own coal?

368

A. No, these dealers were all independent dealers, were all of them buying from the Coal Company, or if not buying coal from the Coal Company, from some one else—but the point in the thing is that practically all of them are located on the rails of the Delaware, Lackawanna and Western Railroad. I think there are probably very few exceptions if any, to that particular fact, but every one of these trestles are located exclusively on the Delaware, Lackawanna and Western Railroad so that whatever coal these particular independent dealers named in the schedules attached to the lease buy, it must be coal which is shipped over the Delaware, Lackawanna and Western Railroad.

Q. Are these leases to dealers for long terms or short terms, the terms stated in the lease? 369

A. All kinds of leases.

Mr. Coudert: These dealers are not themselves producers?

A. They are dealers in coal, sellers in coal in the retail trade.

At this point the hearing was adjourned to Monday, the twenty-fourth day of November, A. D. 1913, for the purpose of correcting the minutes and putting in such other testimony as either side may desire.

370 The taking of testimony in the above entitled cause was continued, pursuant to adjournment, before Richard S. Wilson, Esq., Examiner, at the office of the Delaware, Lackawanna and Western Railroad Company, 90 West Street, New York City, on Monday, the twenty-second day of December, one thousand nine hundred and thirteen, at eleven A. M.

APPEARANCES:

FREDERIC R. COUDERT, Esq., HOWARD THAYER KINGSBURY, Esq., for the United States of America.

WILBUR L. BALL, Esq., for The Delaware, Lackawanna and Western Coal Company.

371 WILLIAM S. JENNEY, Esq., and JOHN L. SEAGER, Esq., for The Delaware, Lackawanna and Western Railroad Company.

WILLIAM S. JENNEY, a witness previously sworn, on behalf of the petitioner, testified as follows:

Further examination by Mr. Kingsbury:

Q. Mr. Jenney, you offered to furnish us with a copy of the mining contract with the Kingston Company. Have you that?

Mr. Seager: I now produce the document (hand-
372 ing paper to Mr. Kingsbury).

Mr. Kingsbury: I offer that in evidence, with the understanding that we shall stipulate on what parts shall actually be printed in the record. This will be Exhibit 15.

The paper so offered and identified was received in evidence, and, by the Examiner, marked Exhibit No. 15, of this date.

Mr. Kingsbury: I also offer in evidence a list of the present Board of Managers of The Delaware, Lackawanna and Western Railroad Company, and

the Board of Directors of The Delaware, Lackawanna and Western Coal Company with a statement of the other directorates held by the various Directors, compiled as stated at the beginning of the list 373

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 16 of this date.

Mr. Kingsbury: I also would like to have marked in evidence, with the understanding that only such portions shall be printed in the record as counsel may agree upon, the following: The annual reports of the Delaware, Lackawanna and Western Railroad Company for 1908, 1909, 1910, 1911 and 1912; and the second annual report of the Delaware, Lackawanna and Western Coal Company of December 31st, 1911. 374

The papers so offered and identified were received in evidence and, by the Examiner, marked Exhibits Nos. 17 to 22, both inclusive, of this date.

First Annual Report of D., L. & W. Coal Co. as of December 31, 1910, offered and received in evidence and marked Exhibit P9.

Q. Mr. Jenney, I asked at a former session, for a profit and loss statement of the Coal Company, as of December, 1912, and I believe that was to be prepared.

A. That was handed to you. 375

Mr. Seager: That was handed to you, but if you haven't it I have another copy which I can give you (handing paper to Mr. Kingsbury).

Mr. Kingsbury: I will read this into the record.

376 PROFIT AND LOSS ACCOUNT.

	Year 1912.
Coal Sales:	$39,399,908.87
Expenses:	
Cost of Coal and Transptn.	$35,528,139.31
Handling and Selling	1,291,445.69
Rent of Trestles, etc.,	94,989.26
Taxes and General Expenses	114,247.60
Total Expenses	$37,028,821.86
Profit from Operation	2,371,087.01
377 Other Income (Interest, etc.),	273,246.24
Net Profit	2,644,333.25
Less:	
Dividends	$659,070.00
Surplus	1,985,263.25
Plus:	
Surplus December 31st, 1911	2,513,119.50
To General Balance Sheet December 31st, 1912,	$4,498,382.75

378 Q. Mr. Jenney, I believe you were to also prepare an approximate statement of the trestle capacities of the Coal Company.

A. I asked our Line Sales Agent, Mr. Memory, located at Newark, to give me the data on that, and he reports that to me, giving the comparative trestle capacities of coal handling capacities at all points except for the cities of Buffalo, Syracuse, Oswego, Utica and Hoboken; and I asked Mr. Birmingham, the auditor of the Coal Company, to obtain the data with reference to those points, which he has obtained. As I stated to you before, the capacities of the Coal Company's trestles we are able to give you accurately; but the capacities of the trestles of others we are not able to give

you accurately, but the data which has been obtained we 379
believe to be approximately correct. As Mr. Memory expresses it in his report to me, so far as pertains to the plants operated by The Delaware, Lackawanna & Western Coal Company, the capacity given is actual. Concerning the plants operated by others, the capacities are estimated, according to our best knowledge and belief, and includes only the facilities which have tangible form, but it does not include the tonnage of innumerable buyers who receive coal on regular delivery tracks and have no well defined receptacle into which their coal is unloaded. In other words, it includes only trestles or coal-handling facilities. Now, the percentages outside of the cities mentioned are, 13.64 per cent. for The Delaware, Lackawanna & Western Coal Company, and 86.36 380
per cent. by others. And taking into consideration the capacities in those cities I have named gives the final comparative capacities as: Delaware, Lackawanna & Western Coal Company, 15.2 per cent.; others 84.8 per cent.

Q. Are these facilities belonging to persons or corporations other than The Delaware, Lackawanna & Western Coal Company, all facilities with which The Delaware, Lackawanna & Western Railroad is in immediate connection and with which no other railroad is in immediate connection?

A. Oh, no. That is "Oh, no" as to the latter question. They are all located in immediate connection with The Delaware, Lackawanna & Western Railroad, but they are not all without connection with any other railroad. 381

By Mr. Coudert:

Q. And the other than Delaware, Lackawanna & Western facilities which you mentioned, include, of course, all the facilities belonging to the companies affiliated with the other coal carrying roads.

A. I don't understand you.

Q. Do you mean that all those other facilities, except those connected with The Delaware, Lackawanna & Western, which you have mentioned at these various points, are facilities belonging to independent coal operators?

382 A. Now, I will answer that question. See if you understand it. What I have been giving you is a comparative statement of the capacities in trestle and coal-handling facilities located along the lines of The Delaware, Lackawanna & Western Railroad owned, leased and operated lines, confining my answer to the facilities which are directly reached by The Delaware, Lackawanna & Western only and also to those facilities which are used in the final disposition of coal to dealers. In other words, trestles from which coal is sold to dealers or to the retail trade direct. Does that answer your question? In other words, it does not include storage trestles or transfer facilities. All of the trestles of others are located on our line; but while some of them may be reached by tracks
383 of other carriers, the number or capacity of any trestle so reached by tracks of other carriers would be inconsiderable, as compared to the others.

Q. Mr. Jenney, have you completed the map which we spoke of the other day?

A. I asked Mr. Seager to have our engineering department to make some blueprints of that map which you said would be acceptable.

Mr. Seager: I have complied with that request, but it is considerable of a job. They are making them now. You asked to have twelve made, of that large map, and I am having that done.

The Witness: So we will have them this week?

384 Mr. Seager: Yes, they will be here by Wednesday of this week.

Mr. Kingsbury: It is understood that the map, when received, will be marked with the next exhibit number.

The map so offered was received in evidence and considered marked by the Examiner as Exhibit No. 23 of this date.

Q. At a former session you testified that you thought that the Coal Company could purchase coal from some of the other large companies, affiliated with other railroad com-

panies, but there might be certain terms with respect to the 385
transportation of that coal. Will you please explain a little further just what you meant by terms with respect to transportation?

A. Well, I simply meant this, that a company, for example, like the Erie, would want to preserve its transportation earnings on anthracite coal. It would not want to sell any coal to The Delaware, Lackawanna & Western Coal Company, unless there was an understanding that its transportation earnings on that coal would be preserved. In other words, The Delaware, Lackawanna & Western Coal Company would be a shipper of that coal. The Delaware, Lackawanna & Western Coal Company might ship all of that coal to points where there would be no haulage over the Erie Railroad, and 386
I assume that The Delaware, Lackawanna & Western Coal Company could not make any deal with the Erie with respect to its coal unless it was made on such a basis that the Erie would preserve its transportation earnings on that coal; in other words, unless the coal was sold at points where the Erie would not lose anything on its transportation earnings from that coal, as compared to what it does now. That is what I had in mind.

Mr. Kingsbury has written me a letter, under date of December 18th, in which he asks us to produce six letters named in that letter. The originals of all of such letters were transmitted by us to the Interstate Commerce Commission in response to a subpœna *duces tecum* to produce such letters in 387
the Anthracite Rate Investigation. We have gone through our files, however, and have found copies of all of the matters requested except the memorandum of March 20th, 1912, which was said to be attached to a letter from Mr. Learoyd to Mr. Loomis, dated December 6th, 1911. That we do not find.

Q. I have a copy of that.

A. If you will give me that, I will ask Mr. Seager to take it up to Mr. Learoyd and find out whether that is authentic.

388 Mr. Kingsbury: The memorandum is appended at the foot of that letter, which is a copy of the whole thing (handing paper to the witness).

The Witness: Perhaps you can tell whether that is O. K. or not, Mr. Seager (handing paper to Mr. Seager).

Mr. Seager: Suppose I ask Mr. Learoyd.

The Witness: All right, ask him about that, will you?

Mr. Seager left the room.

Mr. Kingsbury: At the request of Mr. Kingsbury, Mr. Jenney produces the following letters and they are offered in evidence: Letter from Mr. Loomis to
389 Mr. Dickson, of March 16th, 1910.

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 24 of this date.

Mr. Kingsbury: Letter from Mr. Memory to Mr. Learoyd, of January 30th, 1911.

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit 25 of this date.

Mr. Kingsbury: Letter from Mr. Learoyd to Mr. Loomis, dated December 6th, 1911, with memorandum dated March 20th, 1912, attached.

The Witness (producing paper): There is the letter.

390 Mr. Kingsbury: The memorandum is being verified now?

Mr. Seager (who had returned to the room): Mr. Learoyd is looking at it.

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 26 of this date.

Mr. Kingsbury: Letter from Mr. Memory to Mr. Loomis, dated December 30th, 1911.

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 27 of this date.

Mr. Kingsbury: Letter from Mr. Memory to Mr. H. A. Smith, dated June 11th, 1912. 391

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 28 of this date.

Mr. Kingsbury: Letter from Mr. Loomis to Mr. Learoyd, not dated, but containing a reference to a letter of Cairns of February 23d.

The Witness: That is dated March 2d, 1911.

The paper so offered and identified was received in evidence and, by the Examiner, marked Exhibit No. 29 of this date.

Q. Mr. Jenney, in this letter of Mr. Memory to Mr. Smith of June 11th, 1912, I note the phrase, "Our allotment will not permit us to take on new business," etc. Can you explain what is meant by the words "Our allotment?" 392

A. Yes, sir.

Q. Will you please do so?

A. The demand for anthracite coal on The Delaware, Lackawanna & Western Coal Company is almost universally in excess of the possible supply and it is the practice of the Coal Company, in its effort to treat the trade on a relatively fair basis, to divide the possible supply of coal which they have, in the different territories, on an equitable basis. In other words, they try to determine on what is an equitable allotment of the total supply of coal which they have to sell and deliver to the demand in the West and deliver to the line trade, and various other localities. What he means by allotment is the amount of coal in that equitable distribution of its coal it has been determined it was fair to sell in that territory where that region was included. 393

Q. So it means an allotment of The Delaware, Lackawanna & Western coal itself to the various places in which the coal is sold?

A. The various selling agencies of The Delaware, Lackawanna & Western Coal Company.

394 Q. Mr. Jenney, you testified at a former session that the valuation of the trestles and other facilities which the Coal Company leased from the Railroad Company was fixed at the cost of production of those various facilities?

A. Don't you mean the cost of construction?

Q. I mean cost of construction—I mean that, thank you —cost of construction of these various facilities, less an allowance for depreciation. That is correct, is it not?

A. Yes, and the rental fixed on a five per cent. basis.

Q. And the rental fixed on a five per cent. basis, that I remember. Was the allowance for depreciation a fixed percentage, the same for all the different facilities, or was a different allowance computed for each important item?

395 A. No specific rule of depreciation was adopted; simply the depreciation that it was thought that particular facility had sustained, by reason of wear and tear or what not; long continued use and so forth. In other words, it was an attempt to fix its actual market value.

By Mr. Coudert:

Q. You say that the depreciation was fixed. By whom?

A. Simply from personal knowledge of those who knew about the particular facility, as one would value a house, for instance. A house cost $7,000, and it had been in use for thirty years, and it had to be repaired within a short time, and so forth, and it had depreciated three or four

396 thousand dollars in value.

Q. And from whom did The Delaware, Lackawanna and Western Railroad Company take those estimates; from the persons who were actually in charge of the trestle?

A. The Delaware, Lackawanna and Western Railroad Company was represented in connection with the conference that fixed those values by representatives of our engineering and real estate departments.

Q. And with the others they fixed those values after an inspection of the premises?

A. They had no time to inspect the premises. They had to do it from their own knowledge. 397

Q. That is, they got together, and from their general knowledge of the trestles fixed the depreciation amount on each one?

A. Yes, sir.

Q. Without any specific examination of each trestle?

A. I explained to you at one of the previous hearings that it was the intention of the companies to have all those matters accurately determined by an outside party and that that is now being done. I had a note from one of the men engaged in that, who is an outside party, this morning, and he stated that he expects to complete that matter by the first of the year. 398

Q. At the time the estimate was made, there was no appraisal made by an outside party nor by any outside parties, on the amount of the depreciation?

A. No, sir, we had no time to do that before this contract took effect.

By Mr. Kingsbury:

Q. Do you know what was the largest per cent. of depreciation allowed in any one case?

A. I don't think we ever adopted any percentage at all.

By Mr. Coudert:

Q. You haven't any written data on that point in your possession? 399

A. No. There were some memorandums made at the time, but so far as I know they are not extant.

Q. They were mere approximations made between the parties in interest.

A. Exactly. We got at it just as close as we could, within the short time available, with the idea to get the fair basis as between the two companies.

400 By Mr. Kingsbury:

Q. The price at which the coal then owned, at the time of the contract, was turned over by the Railroad Company to the Coal Company, bore what relation to the then market price of the coal—was it the same or was it higher or lower?

A. Well, Mr. Kingsbury, we made a contract by which the coal of the Railroad Company was to be sold to the Coal Company on a basis of 65 per cent. of the selling price of that coal at tidewater. Now, an effort was made by our people to dispose of all of the coal on hand on the same basis as that contract, as near as we could, and the
401 prices were fixed for the coal which would, as near as possible, approximate the same result as though the coal was sold on a 65 per cent. basis.

By Mr. Coudert:

Q. That is all the coal on hand?

A. Yes, sir, all the coal on hand. Now, I have a statement prepared, and you can see how near they arrived at that.

Q. Yes, we would like to have that.

A. (producing a paper): As you will note by those figures if that coal had been sold strictly on a 65 per cent. basis, the Coal Company would have paid something more
402 than those figures show. That is explainable by two items which were taken into account. In the first place, with reference to the amount of coal that was sold. That, of course, could not be measured at these different points; you could not go into this trestle, or this point or what not and measure that coal. We had to sell it on the basis of what the books showed there ought to be there, from the last inventory, and it was assumed that there would be a shortage, as subsequently proved to be the case, in the actual amount of coal which the books showed to be there, and the actual amount of coal that was there, so the Coal

403 Company had to bear that shortage. Then, in the second place the Coal Company paid the Railroad Company in full for all the coal. Now, there is always a vast amount of degradation in coal, resulting from the breaking up of coal in transit. What starts as egg coal breaks down and has to be sold as a smaller size, and in that way there is a loss, so that the degradation in the coal that was purchased by the Coal Company from the Railroad Company on the coal that was then, at the time this contract was made, stored on the Western docks, so-called, points west of Buffalo—was approximately $105,000 loss to the Coal Company, which it would have to bear. So that I think the figures will show that, taking into consideration the shrinkage of the book values and the degradation, the 404 prices at which the coal was sold were about as near the contract price for which the Railroad Company was subsequently to sell its coal to the Coal Company as could be arrived at.

Q. And no allowance was made for the degradation or shrinkage?

A. Yes, sir. In other words, you will see there that there is a difference between the 65 per cent. price at which that coal would have been sold and the actual price agreed on to take care of those two items.

Mr. Kingsbury: Mr. Jenney produces a statement in connection with his answer, which is as follows: 405

406 **STATEMENT SHOWING COAL PURCHASED AUGUST 1st, 1909, FROM THE D. L. & W. R. R. COMPANY, SAME BEING IN STOCK AT VARIOUS POINTS.**

Recapitulation.

	Tons	Rate Paid	Amount
Western Points, all Sizes.....	465,044.07	$5.50	$2,557,743.92
Eastern Points, Prepared.....	84,780.06	4.00	339,121.20
" " Smaller	81,553.11	1.00	81,553.55
	631,378.04	$4.716	$2,978,418.67

407 If based on 65 per cent. basis plus transportation, the cost would be:

Western Points, all Sizes.....	465,044.07	$5.508	$2,561,513.80
Eastern " " "	166,333.17	3.203	532,745.93
	631,378.04	$4.899	$3,094,259.73
As Paid R. R. Co.....			2,978,418.67
			$115,841.06
Per ton			.183

Note: Figuring the stock coal on the 65 per cent. basis plus transportation it makes a difference of $.183 per ton, as compared with the first rates paid.

408 The degradation and the loss account of shortage plus interest on the capital invested is not included.

STATEMENT SHOWING COAL PURCHASED AUGUST 1st, 1909, FROM THE D. L. & W. R. R. COMPANY, SAME BEING IN STOCK AT VARIOUS POINTS.

Western Points	Tonnage	Rate Paid	Amount	65% averages plus freight chgs.	If based on 65% averages	Diff. in price as comp. with pur. price of $5.50 per ton
Montreal	49,523.19	$5.50	$272,381.73	$5.86	$290,306.16	$.36
E. L. Hedstrom, Chicago	56,347.02	"	309,909.05	5.61	315,931.23	.11
Milwaukee	144,121.03	"	792,666.32	5.283	761,380.64	.217*
North West. Fuel Co., Chicago.	12,808.05	"	70,445.38	6.395	81,912.55	.895
North West. Fuel Co., Superior	149,201.08	"	820,607.70	5.455	813,903.52	.045*
S. C. Schenck, Chicago	48,892.09	"	268,908.47	5.68	277,658.55	.18
S. C. Schenck, Toledo	4,150.01	"	22,825.27	4.927	20,421.15	.573*
	465,044.07	$5.50	$2,557,743.92	$5.508	$2,561,513.80	
					2,557,743.92	
					$3,769.88 per ton	$.008

		Average value at Mines 65%	Paid R. R. Co.	Difference
BY SIZES:				
Grate	10,995.18	$2.74	$5.50	$2.76
Egg	59,188.16	3.00	5.50	2.50
Stove	219,287.19	3.00	5.50	2.50
Chest.	135,180.16	3.00	5.50	2.50
Pea	33,010.13	1.81	5.50	3.69
Buck.	4,580.11	1.19	5.50	4.31
Scrgs.	2,799.14	.15	5.50	5.35
	465,044.07			

*Figures in red in original, denoting excess of price paid over price figured on 65% basis.

412 STATEMENT SHOWING COAL PURCHASED AUGUST 14, 1909, FROM THE D. L. & W. R. R. COMPANY, SAME BEING IN STOCK AT VARIOUS POINTS.

		Tonnage	Rate Paid	Amount	If based on 65% averages plus transp'n the cost would be		Difference in Rates
Buffalo.....	Prepared	16,841.09	$4.00	$67,365.80	5.00	84,181.86	$1.00
	Smaller	2,381.13	1.00	2,381.65	3.498	8,332.73	2.498
Local Pkts....	Prepared	6,951.06	4.00	27,805.20	4.582	31,852.57	.582
	Smaller	17,466.17	1.00	17,466.85	2.822	49,287.10	1.822
Oswego.....	Prepared	1,045.06	4.00	4,181.20	4.943	5,166.69	.943
	Smaller	461.16	1.00	461.80	1.75	808.15	.75
Syracuse.....	Prepared	1,795.05	4.00	7,181.00	4.891	8,779.77	.891
	Smaller	705.11	1.00	705.55	2.802	1,976.93	.802
Dover.....	Prepared	58,147.00	4.00	232,588.00	4.10	238,402.70	.10
Pt. Morris....	Smaller	60,537.14	1.00	60,537.70	1.717	103,957.43	.717
413		166,333.17	2.529	$420,674.75	$3.203	$532,745.93	$.674
						420,674.75	
SIZES:	Grate	665.15				$112,071.18 per ton	$.674
	Egg	3,553.02					
	Stove	75,452.18					
	Chest.	5,108.11					
		84,780.06	@ $4.00	$339,121.20			
	Pea	10,261.07					
	Buck.	21,291.06					
	Rice	34,364.07					
	Barley	14,871.14					
	Scrgs.	764.17					
		81,553.11	@ $1.00	81,553.55			
414		166,333.17		$420,674.75			

Mr. Seager: Mr. Learoyd has examined the memo- 415
randum dated March the 20th, 1912, made in connection with the letter dated December 6th, 1911, and finds it to be correct.

Mr. Kingsbury: I have nothing further.

By Mr. Seager:

Q. Do you care to say anything, Mr. Jenney?

A. I think I would like to make a brief statement in connection with these letters. For more than six months last past inspectors of the Interstate Commerce Commission have examined our files and have made notes of all letters, statements, memorandums or what not which they thought pertinent to the inquiry being conducted by the 416
Commission into the rates and practices of anthracite carriers. Inspectors have gone through all of our files at Scranton and New York, and I assume that these letters which we were first asked to produce on December 18th, were letters which inspectors for the Commission or someone connected with the Commission advised the Department of Justice of, and that explains this request. These are only six of a vase number of letters which we have been subpœnaed to produce and have produced to the Commission.

Now, in connection with these letters which indicate that, with respect to two or three transactions in the past, dealing with anthracite rate matters, Mr. Loomis has been in conference with certain of our traffic people; I desire to 417
explain the reason for his being consulted in these particular instances.

Mr. Dickson consulted with Mr. Loomis in connection with the taking of coal from the colliery or coal company of which he was President at a time when the Railroad Company was purchasing that coal. At that time we had no contract with the Price-Pancoast Coal Company, but the Railroad Company was purchasing coal from it on basis of a 65 per cent. contract, as I understand, and the matter of the amount of coal which we should take from the Price-Pancoast Coal Company, was a matter within the jurisdiction of Mr. Loomis, as Vice-President of the Rail-

418 road in charge of the coal department. The next is not a Loomis matter.

The third letter produced with respect to a letter from Mr. Learoyd to Mr. Loomis, December 6th, 1911—Mr. Loomis was consulted in connection with that matter because the request for our putting in joint rates with the Delaware & Hudson at Minooka was made by Mr. Thorne, of Thorne & Neal, coal producers at that point. Mr. Thorne is the well-known Brinck Thorne, formerly of Yale, who was an intimate personal friend of Mr. Loomis; indeed they lived and roomed together at Scranton there for a number of years before Mr. Loomis came here. So that Mr. Loomis became interested in that because of his per-
419 sonal friendship for Mr. Thorne. No one else at Minooka except the firm of Thorne & Neal was interested in those rates.

In connection with the letter from Mr. Memory to Mr. Loomis of December 30th, 1911, that was all in connection with the request by Mr. Mallory, the President of the Edison Portland Cement Company to our traffic department to obtain a reduction in the rates on the small sizes of coal to New Village, New Jersey, where their plant was located, and our traffic department desired to obtain certain information in connection with the matter from Mr. Loomis, which accounts for Mr. Memory's letter to Mr. Loomis on the subject. The matter of reduction of rates was dealt with by the traffic department, and the rates were reduced.

420 Number five is not a matter in which Mr. Loomis was interested.

By Mr. Coudert:

Q. Does it appear who Mr. H. A. Smith was?

A. Mr. H. A. Smith was a Line Sales Agent of The Delaware, Lackawanna and Western Coal Company. A. S. L. A., Assistant Line Sales Agent.

The last letter of Mr. Loomis to Mr. Learoyd, March 2, 1911, pertains to a request of the General Freight Agent of the Lackawanna & Wyoming Valley Railroad located at Scranton, or in that vicinity a trolley proposition which runs from Scranton down to Wilkes-Barre, the

Laurel Line, so-called, for through rates with us on some small sizes of washery coal, to serve a chap who had acquired a washery on the line of the Lackawanna & Wyoming Valley Railroad, and it was to enable that owner to get his coal at a fair rate to Scranton and other points. The matter was taken up by the traffic department with Mr. Loomis because of the fact that he had lived in Scranton for some years and was intimately acquainted with the situation with respect to the demand and sale of the coal of that nature in Scranton and that vicinity, and with this road. That is all I desire to say. 421

Mr. Coudert: That is all that we have.

By Mr. Seager: 422

Q. You have referred to the fact that we have been called upon to produce six letters, showing applications for rates which had been referred to Mr. Loomis, out of the large number of applications which the Railroad Company has had during the period covered by these letters. You have not stated what became of the other applications, how they were treated.

A. Not all of these six letters pertain to rate matters. One or two of them pertain to other matters. I have endeavored to explain how it happened that, as to these few isolated cases. Mr. Loomis was conferred with. Ordinarily speaking in the absence of some particular circumstance which brought Mr. Loomis into a matter of this nature he had nothing to 423 do with the fixing of rates; that was solely the province of the traffic department. Mr. Loomis, as Vice-President of the Railroad Company, in charge of the coal department, pertaining to the movement and preparation of coal, had charge of those matters, and has also had a vast deal to do with the operating department of the railroad. He has no familiarity and nothing to do with rate matters in ordinary cases. We have an infinite number of applications with respect to rates on all matters and have had a great many matters of that sort up in the last five years, with respect to rates on anthracite coal. Except for these isolated cases, I know of

424 no other cases of the dozens or even hundreds of such cases which have not been handled exclusively by our traffic department without conference, certainly with Mr. Loomis, and, in most cases, without conference with any other department of the railroad, except the obtaining of the approval of the President of the Railroad Company, Mr. Truesdale, at the close of the negotiations.

Q. In answer to a question by Mr. Coudert, you stated that an allowance was made for degradation and for loss in storage plants, in the way of shortage, at the time the contract of August 2nd, 1909, was made. Did you mean to give the impression that an allowance was made for those items in fixing the price of $4, $5.50 and $1, respectively, as stated
425 in the contract itself of August the 2nd, 1909?

A. What I meant to say was that in agreeing upon those prices the fact that there would be depreciation and that there would be a shortage was taken into consideration by both parties and prices were agreed to which, in view of those two shrinkages, would, as near as could be agreed to, result in a sale of the coal of the Railroad Company to the Coal Company on the same basis as the contract provided.

Q. In other words, after the contract was made and after the amount of coal was ascertained from the books of the company, there was no deduction from the contract price?

A. None whatever.

Q. On account of these two items to which you have re-
426 ferred?

A. None whatever. The Coal Company paid the prices named in the contract for the coal, on the basis of no degradation and on the basis of book quantities of coal. Those full prices.

Mr. Seager: That is all. We have nothing further.

Mr. Kingsbury: Then we may understand that the testimony is closed.

Mr. Seager: That the testimony is closed.

Mr. Coudert: That the testimony is closed on both sides.

Petitioner's Exhibit P1. 427

CERTIFICATE OF INCORPORATION

OF

THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY.

This is to certify that the undersigned do hereby associate themselves into a corporation, under and in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations, Revision of 1896," and of any and all acts supplementary thereto and amendatory thereof; and do severally agree to take the number of 428
shares of capital stock set opposite their respective names:

FIRST: The name of the corporation shall be THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY.

SECOND: The location of the principal office in the State of New Jersey shall be at No. 51 Newark Street, in the City of Hoboken, County of Hudson.

The name of the statutory agent therein and in charge thereof, upon whom process against the company may be served is Hudson Trust Company. Said office is to be the registered office of said corporation.

THIRD: The objects for which this corporation is es- 429
tablished are:

To purchase, mine, produce, prepare, manufacture or otherwise acquire and hold, and to sell or otherwise deal or traffic in at wholesale or retail, coal, coke, ores, metals, minerals, fuels, woods, lumber and other materials, wares, merchandise, goods, chattels and commodities, and any of the products of, and any article consisting or partly consisting thereof, and to act as sales and purchasing agent or factor of other corporations, firms and individuals enengaged in such businesses.

430 To purchase, buy, lease or otherwise acquire coal and ore mines, lands, properties, minerals, mining and water rights, and all manner of interests in lands, wherever situate; and to develop, improve, lease, dispose of or sell all or any of such land or property so acquired.

To buy, build, construct, erect, establish and otherwise acquire; and maintain, operate, use and lease piers, docks, plants, buildings, real estate and all necessary conveniences, works, equipment, railroad and railroad tracks, cars, engines, boats, vessels and other means of transportation, privileges and rights necessary or incidental to the carrying on of said business of acquiring, buying, purchasing, selling and trafficking in, at wholesale or retail, coal, coke,
431 ores, woods, metals, minerals, fuels, lumber and other materials, wares, merchandise, goods, chattels and commodities, and any of the products of, and any articles consisting or partly consisting thereof; and for the development and operation of said lands and mines, and for the mining and extraction of minerals and their by-products from the lands and property purchased or owned.

To buy, acquire, purchase, sell, make, alter, hire and deal in apparatus, machinery, hardware and articles of all kinds, capable of being used for the purpose of the business herein mentioned, or likely to be required by the customers of any such business.

To acquire by purchase, subscription or otherwise, and
432 to hold as investment, and to guarantee the principal, interest and dividends of, any bonds or other securities of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations of the State of New Jersey, or of any other state, territory or country.

To aid in any manner, any corporation or association of which any bonds or other securities or evidence of indebtedness, or shares of capital stock are held by the corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other

securities or evidences of indebtedness, or shares of capital 433
stock, and to hold any and all rights, privileges and franchises, incident or necessary thereto; except that the company shall not engage in any business which shall require the exercise of the right of eminent domain within the State of New Jersey, for the development and conduct thereof.

The corporation shall have power to conduct its business in all its branches, in the State of New Jersey, as well as in all other states and in all foreign countries, and to have one or more officers therein.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of the specific powers shall not 434
be held to limit or restrict in any manner the powers of the said corporation.

The business or purpose of the Company is from time to time as principal or as agent to do any one or more of the acts and things herein set forth; and it may conduct its business in other States and in the Territories and in foreign countries, and may have one office or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and 435
powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations, in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or bonds or contracts or other obligations; to make and perform contracts of any kind and description; and in carrying on its business; or for the purpose of attaining or furthering any of

436 its objects, to do any and all other acts and things, and to exercise any and all other powers which a co-partnership or natural person could do and exercise, and which now or hereafter may be authorized by law.

FOURTH: The capital stock of said company shall be six million, eight hundred thousand dollars ($6,800,000) divided into one hundred and thirty-six thousand shares of the par value of fifty dollars ($50.00) each.

FIFTH: The names and post-office addresses of the incorporators, and the number of shares hereby subscribed for by each (the aggregate of such subscriptions being $12,550 is the amount of capital stock with which the company will
437 commence business) are as follows:

Name.	Post Office Address.	No. of Shares.
William Fahnestock	51 Newark Street, Hoboken, N. J.	150
Percy R. Pyne 2nd.	Princeton, N. J.	100
Edward E. Loomis	Short Hills, N. J.	1

SIXTH: The duration of said corporation shall be perpetual.

SEVENTH: The number of directors of the Company
438 shall be fixed from time to time by the by-laws.

The number of the directors may be increased as may be provided in the by-laws. In case of any increase of the number of the directors, the additional directors shall be elected as may be provided in the by-laws, by the Directors or by the stockholders at an annual or special meeting.

In case of any vacancy in the number of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their 439
meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the Board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of New Jersey passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the con- 440
sent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employe of the Company may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a ma- 441
jority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint any other Standing Committees, and such Standing Committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

442 The Board of Directors may appoint not only the officers of the Company, but also one or more vice-presidents, one or more assistant treasurers and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer and of the secretary, respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any
443 such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the Company's capital stock as provided by Law.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the Stockholders, and no Stockholder
444 shall have any right to inspect any account or book or document of the corporation, except as conferred by Statute or authorized by the Board of Directors, or by a resolution of the Stockholders.

Subject always to by-laws made by the Stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the Stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

No director shall be disqualified from voting or acting in behalf of the Company in contracting with any other Company in which he may be a director or a stockholder. Any act or contract ratified by a majority of a quorum of the stockholders, at an annual or a special meeting, shall be as binding as though ratified by every stockholder. 445

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 29th day of June, 1909.

(Sgd.) WILLIAM FAHNESTOCK (L. S.)
(Sgd.) PERCY R. PYNE, 2nd. (L. S.)
(Sgd.) E. E. LOOMIS (L. S.)

Signed, Sealed
and delivered
in presence of: 446
(Sgd.) Wm. H. Bruder.
(Sgd.) George H. Gardiner.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

BE IT REMEMBERED that on the 29th day of June, A. D. 1909, before me, a foreign commissioner of deeds for the State of New Jersey, residing in New York, personally appeared WILLIAM FAHNESTOCK, PERCY R. PYNE, 2nd., and EDWARD E. LOOMIS, to me known and known to me to be, and who, I am satisfied are, the persons named in and who executed the foregoing certificate of incorporation, and having first made known to them and to each of them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. 447

(Sgd.) EDWIN F. COREY,
Foreign Commissioner of Deeds for the State of New Jersey, Office, No. 56 Wall Street, New York City.

[SEAL.]

448 Endorsed:

"Received in the Hudson Co., N. J. Clerk's Office June 29 A D. 1909 and Recorded in Clerk's Record No..... on Page..... John Rotherham, Clerk."

Filed and Recorded
Jun. 30, 1909.
S. D. Dickinson,
Secretary of State."

STATE OF NEW JERSEY.

Department of State.

I, S. D. DICKINSON, Secretary of State of the State of
449 New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of The Delaware, Lackawanna and Western Coal Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Thirtieth day of June, A. D. 1909, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set
[SEAL.] my hand and affixed my Official Seal at Trenton, this Thirtieth day of June, A. D. 1909.

(Sgd.) S. D. DICKINSON,
Secretary of State.

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Petitioner's Exhibit P3.—List of Stockholders, Delaware, Lackawanna & Western R. R. Co. 451

Abercrombie, Mathilde		Ames, Elizabeth C.	148
Abeel, Margaret H.	18	Anderson, Phebe L.	23
U.	69	Andrews, Charlotte H.	5
Abercrombie, W. H.	138	Andrews, Harriet N.	69
Aborn, Carlton N.	46	Andrews, J. Sherlock	173
Aborn, James A.	46	Appleton, Nina H.	771
Ackerman, Louise S.	23	Armstrong, Milton N.	63
Adams, Edward C.	230	Arnold, Annie S.	58
Adams, Julia M.	29	Arnold, Frank & E. K.	
Adams, Sarah P.	95	Price, T'tees. u/w E.	
Adriance, Francis H.	87	Padelford	14
Adriance, John E.	115	Arthur, C. A.	115
Affleck, Frank B.	24	Ashley, Homer	46
Affleck, Est. James	23	Astor, Wm. Waldorf	7,141
Affleck, James G.	43	Atherton, Louis M.	2
Affleck, Mary S.	2	Atlantic Mutual Ins.	
Affleck, William	25	Co.,	2,070
Aged Woman's Home		Auchincloss, E. Ellen	12
of Montgomery in		Auchincloss, Maria S.	45
State of Penna.	12	Ayars, Clare H.	7
Agnew, Mary H., Dec.,	230	Ayres, Emma L. C.	10
Agnew, Mary Nash	111	Ayres, Mary Butler	46
Alba, Eleanore C.	1	Bagg, Mary C. Clapp	46
Alexander, Caroline B.	30	Bailey, Chas. M.	115
Alexander, Florian as		Bailey, Harriet A.	250
T'tee of Est. of Eve		Bailey, Sarah C.	83
Alexander	81	Bainbridge, Lawrence	
Alexander, Victor F.	115	M.	2
Alexandre, Pauline On-		Baird, Alice M.	4
ativia	149	Baird, Alice M.; Lillian	
Allen, Christopher	58	Benet, Imlay L. Ben-	
Allen, Geo. B., Dec.	23	et, T'tees of Est. Lu-	
Allen, Martin S.	35	dovic Bennet	76
Allen, Wm. L.	35	Baker, Agnes A.	27
Allen, Z. Nelson	35	Baker, Est. Anna B.	44

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454 Baker, Elsie L. 12
Baker, Geo. F. 55,123
Baker, Geo. F., Jr. 633
Baker, Harold P. 12
Balch, Adelaide M. 1
Balch, Alice M. & Grace Persons Balch, 2
Balch, Alice M. 20
Balch Grace Persons 20
Baldwin, Sarah J. Y. 35
Ballantine, Jeanette 230
Ballantine, John H., Dec. 1,380
455 Ballantine, Robert F., Dec., 2,300
Ballou, Leonard, dec. 92
Bangs, Anna D. (Mrs.) 12
Banks, David 14
Barbour & Co. 12
Barnes, Ellen S. 35
Barney, Mary Alice 45
Barns, Hattie B. 136
Barns, Isoline N. 159
Barns, Isoline N. & Hattie B. Barns, Ttees. u/w Elizabeth A. Barns, 26
456 Barrett, John W. 40
Barron, Lizzie 52
Batcheller & Adee, 50
Bartlett, Amos—Chas. G. Washburn & Frank Bulkeley Smith, Ttees. under 11th clause of will H. N. Slater, 414
Bartlett, Amos—Chas. G. Washburn & Frank Bulkeley Smith, Ttees. Mabel Hunt Slater, 115
Barton, Edward D. 35
Barton, Geo. E. 35
Barton, Seth 9
Bartram, Alice A. 60
Bartram, Edwin T. 12
Bartram, Harry E. 11
Bartram, Joseph Percy & Mary B. Woodruff, Ttees. under Sec. 4 of the will Sarah J. Bartram for the benefit of Mary B. Woodruff, *et al.*, 117
Bartram, J. Percy & Sarah J., Ttees. for benefit Mary B. Woodruff, etc., 38
Bartram, T. Earle 11
Baruch Brothers, 50
Bassett, Margaret K. 701
Bastian, Sovina P. 14
Battell, R. & J. W. Stewart, Ttees. for Jos. Battell, 207
Battell, R. & J. W. Stewart, Ttees. for Alice B. Eldridge, 190
Battell, R. & J. W. Stewart, Ttees. for Isabella P. Eldridge, 202
Battell, R. & J. W. Stewart, Ttees. for Mary Eldridge, 202

Battell, R. & J. W. Stewart, Ttees. for Irene B. Swift,	188	Beckwith, Daniel	29 457
Battell, R. & J. W. Stewart, Ttees. for Ellen B. Terry,	178	Bedell, Abner K., dec.	377
Bayer, Edwin	50	Bedell, Emmeline Reed	20
Baylis & Co.,	4	Bedell, Margaret S.	33
Beach, Elizabeth C. J.	18	Bedell, Mary	34
Beadleston, Edith	20	Beebe, E. P. & Francis C. Welch, Ttees. u/w J. M. Beebe,	325
Beadleston, Edith & Henry C., Ttees. Henry C. Beadleston,	20	Beecher, Mary G.	35
Beadleston, Edith & Henry C. Ttees. Wm. L. Beadleston,	20	Bell, Bertrand F.	58
Beadleston, Edith & Henry C., Ttees. Randolph Beadleston,	20	Bell, Edward J.	2
Beadleston, Edith & Henry C., Ttees. C. Perry Beadleston,	20	Bell, Gordon K.	58
Beadleston, Edith & Henry C., Ttees. Alice Lee Beadleston,	15	Bell, James S.	230
Beardsley, Morris B., Ttee. under Sec. V, will Anna M. Bartram for Alice A. Bartram, *et al.*,	109	Bell, Laura B.	57 458
Beardsley, Morris B., Ttee. under 1st codicil will Anna M. Bartram for benefit Edwin T. Bartram, *et al.*,	109	Bell, Mary	230
Becker, Margaret J.	58	Bell, Sarah E.	115
		Bell, Stirling	29
		Benedict, Drysdale & Co.	100
		Benet, Imlay L.	4
		Benet, Lillian,	11
		Benham, F. N., Ttees. for F. & H. S. Burr, u/w Ephraim H. Burr, dec.	164
		Bennett, Chas. H.	12
		Benson, Oscar F.	58 459
		Benson, Sarah L.	39
		Berard, Frances A.	58
		Biglow, Anna G.	14
		Bill, Charles A.	10
		Billard, John L.	115
		Bishop, Bertha L.	18
		Bishop, Herbert M.	173
		Bishop, Jane Maria	173
		Bishop, Louis B.	173
		Blair, C. Ledyard	4,954

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Blair, DeWitt C. 46
Blair, Woodbury, Ttee. for Virginia W. Lowery Brunetti, 173
Blair, Woodbury 14
Blanchard, A. H. 920
Blauvelt, Wm. D. 1,035
Blumenthal, Geo. 6,644
Blunt, Albert C. 115
Blunt, Margaret A., dec. 46
Bodine, Amanda D. 10
Boissevain, Arabella M. 61
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Boissevain & Co., 60
Bond, Riley W., dec. 23
Bonnel, David W. 132
Bonnel, Emmaline 30
Borton, Joshua E. 8
Bostwick, Delia F. 3
Bostwick, Helen C. 230
Boswell, Sarah H. 10
Borune, F. G. 2,300
Bourne, Sarah F. 87
Bowdoin, Geo. S. 1,150
Boyd, Elsie M. 29
Boyd, Elizabeth 23
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Boyd, Ida C. 29
Boyden, Charles 35
Bradford, Matilda R. L. 42
Bradley, Mary C. S. 37
Bradshaw, Joseph P. 1
Brady, Anthony N. 1,150
Bragadir, Yvonne Richelot 108
Brainerd, Ida G. 23
Brawley, Kittie 115
Breese, James L. 230
Brewster, Elizabeth 23
Brewster, Harriet J. 144
Brewster, Mary E. 13
Bridgham, Fanny 80
Bridgham, Samuel W. —John I. Kane & Chas. L. Carpenter Ttees. Fanny Bridgham, etc., 159
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Brinck, Adelaide E. 14
Bristol, Fanny L. 20
Bristol, John W. 38
Bristol, Mary B. 40
Brittin, Virginia F. 460
Britton, Harriet Louise 96
Britton, Nathaniel L. 95
Britton, Richard H. 95
Brokaw, Isaac V. 1,400
Bromley, Frances P. 5
Bronson, Jennie C. 112
Bronson, J. Hobart 345
Bronson, Margaret L. 112
Brookman, Marion P. 2,459
Brooks, H. Mortimer 345
Brooks, Josephine 7,533
Brown, Chester W. 40
Brown, Cyrus C. 12
Brown, Elon G. 132
Brown, James C. 286
Brown, M. Bayard 1,500
Brown Brothers & Co. 876
Bruce-Brown, David Loney 115
Bruce-Brown, William 115

Brunetti, Virginia W. L. 115
Bryan, Benj. B., Jr. 1
Bryce, Harriet T. 54
Buchanan, Anne M. 29
Buchanan, T. Drysdale 5
Buckley, Chas. R. 58
Buckley, John D. 58
Bulkley, Benj. A. 620
Bulkley, Jonathan 173
Bulkley, Theodora 173
Bulkley, Moses & Jonathan, Ttees, for Grace A. Bulkley 345
Bulkley, Ttees., Theodora Bulkley 345
Bull, Fanny E. 144
Burke, Charles C. 220
Burke, Elizabeth W. 460
Burke, Eugene S. 7
Burns, Phebe E. 2
Burr, William 19
Burrough, Margaret M. K. 141
Burrows, Mary W. 104
Butler, Arthur G. 32
Butler, Chas. A. 230
Butler, Frances H. 18
Butler, Gertrude M. 8
Butler, Julia H. 250
Butler, Marianne E. 8
Butler, Wm., Allen, Jr. 115
Butter, Chas. A. J.—J. Wm. Clark *et al.*, Ttees. under Antenuptial settlement between Agnes M. Clark & Chas. A. J. Butter 58
Butts, Mary 230 463
Byrd, William as sub. Ttee. under the will of Mary H. Maury 16
Cachard, Caroline 115
Cadwalader, John L. & Geo. W. Wickersham, Ttees. Wm. Cutting Vol. Trust 115
Callender, F. Arthur 10
Camp, Theo. C. & Geo. X. McLanahan, Ttees. under 10th Clause of will Caroline W. Baldwin 276 464
Campbell, Emeline C. 35
Campbell, Louise H. 38
Candee, Louise N. 34
Cantellauve, M. A. R. deV. 76
Carhart, Marion B. 1,704
Carlisle, Mellick & Co. 17
Carnochan, Frances A. 192
Carroll, Chas. 91
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Carroll, Ttees. Comtesse Mary Louisa de Kergorlay, etc. 57
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Carter, John A. 115
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Cartwright, Rachel A., dec. 2,070

466 Case, Mary A. 29
Castree, John W. & Emily D. Van Wagenen, Ttees. u/w Carrie R. Castree 82
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Central Trust Co. Ttee. Trust created by last will & testament of E. S. Higgins for benefit Josephine
467 Brooks 2,875
Central Trust Co. as sub. Ttee. of trust created by 8th clause will, etc., Emma L. Higgins for Gladys B. Brooks 1,265
Central Trust Co., 7th clause for Josephine W. Livermore 1,265
Central Trust Co., 6th clause for Reginald Brooks 1,265
468 Chafee, Mary D. 20
Chambers, Catherine DeWitt 126
Chambers, Luther H. 26
Chandler, Randolph H. 9
Chapman & Seaman 1,150
Chapman, Ellen T. 115
Chapman, Esther C., dec. 29
Chapman, Harry E. 115
Chase, Elizabeth 58
Chauncey, Florence I. 50
Chauncey, Mary L. 78
Cheney, John W. 30
Childs, William H. 14
Chittenden, Anna Preston 400
Choate, Joseph H., Jr. 100
Choate, Jos. H. 375
Choate, Mabel 100
Church, Chas. E. 87
Cilley, E. H. 5
Clark, David Burnett 46
Clark, Edward 23
Clark, Ellen M. (Mrs.) 23
Clark, Henry I. 72
Clark, Henry I. & William L. as Ttees u/w John E. Clark for Mary C. Kerr 46
Clark, Ttees. etc., for Catherine C. Bothwell 46
Clark & Co., Henry I. 100
Clark, Horace B. 30
Clark, J. William 58
Clark, Mai K. 701
Clark, Matilda R. 30
Clark, Theodore S. 575
Clark, William L. 46
Clark, Childs & Co. 200
Clarke, Anna M. 92
Clarke, Sarah H. 38
Clarkson, Banyer 35
Clarkson, Catharine G. 100
Clarkson, Matthew 115
Clausen, Sarah G. 42
Clawson, Louisa 18
Cleveland, Frances E. 8
Clinton, Chas. 5
Closson, Henry B. 15
Clough, Harriet K. 12
Cobb, Augustus G. 219

Cobb, E. Benedict	230	Cookingham, Maria T.	69	469
Cohen, William N.	200	Cooley, Chas. P.	200	
Colby, Louis St. Clair	11	Cooley, Francis R.	173	
Cole, Anna Tailer	149	Cooper, Valerie Frankel	5	
Colgate & Co., Jas. B.	10	Cornell, Geo. F., Dec.	460	
Colgate, Margaret G.	511	Corning, John J.	2,400	
Collins, Minturn Post., Ttee. for Flora Isham Collins	46	Corning, Mary I. (Miss.)	115	
		Corse, Frances	23	
Colt Bequest, The Ttees.	52	Cortelyou, Peter	102	
Colt, Elizabeth H. (Est.)	12	Corwith, Sarah H.	57	
Colt, Harris D.	17	Coryell, Tobert, dec.	9	
Colt, Mary Sloan	93	Cotting, Chas. E. & Chas. Boyden, Ttees. etc.	23	470
Colton, Caroline West	58			
Colton, Catharine	52	Coursen, Ella S.	29	
Colton, Chas. S.	230	Cox, Mark T., dec.	117	
Colton, Kate V.	161	Coxe, Maryette A.	126	
Colton, Mary B.	207	Cramer, Harriet L.	33	
Columbia College in the City of New York, Ttees. of	119	Crane, Annie F.	46	
		Crawford, Sallie P.	9	
		Cress, Cornelia G.	14	
Commercial Trust Co., N. J., as sub. Ttee. for Helen N. Falkner	52	Crimmins, Julia T.	92	
		Crisfield, Laura Z.	26	
		Culbertson, Emilie P.	12	
Commonwealth Title Ins. & Trust Co. Gdn. Geraldine M. Hubbard	5	Curtis, Ariana R. W.	115	
		Curtis, Atherton	230	
		Curtis, Lisa	115	471
Conklin, James W.	26	Curtis, Mary C. W.	23	
Conklin, Mary P.	14	Curtis, Samuel, dec.	104	
Connecticut Trust & Safe Deposit Co., Ttee. for Clara P. Porter	50	Curtis, Wm. J.	230	
		Cutting, Churchill H.	4	
		Dalrymple, Alex. S.	19	
Continental Ins. Co.	4,800	Daly, David R.	25	
Converse, Edmund C.	230	Damon, W. E.	391	
Cook, Alice I.	23	Dana, Caroline B.	38	
Cook, Caroline	58	Danesi, Mary (Madame)	27	
		Darling, Thos., Ttee.		

472	Frank D., Cooley	9
	Darling, F. M. D. (Mrs.)	41
	Davidson, Geo.	12
	Davis, Margaret A.	5
	Davis, Margaret H.	38
	Davis, Mary P., Ttee., Eliza M. & J. M. Porter	115
	Davis, Wm. L.	24
	Davison, H. P.	12
	Dawson, Benjamin F.	40
	Dawson, Julia Douglas	40
	deArroyo, Renee P.	23
473	DeCoppet & Doremus	538
	DeGardereins, M. R. E. R. deV.	78
	DeHaven & Townsend	400
	DeHeredia, Georgie B. C.	287
	DeKergorlay, Mary L.	25
	Delafield, Violetta W.	350
	De la Grange, Anita M.	13
	DeLaPorte, Helen Reed	10
	Da las Casas, Carmen A.	33
	DeLangier-Villars, Carola L.	46
474	DeLaporte, Helen	4
	DeLaroche-Vernet, Suzanne	212
	DePerinat, Carmen Terry	1,150
	D. L. & W. R. R. Co. (Co.)	2,596
	DeMott, Sarah F.	100
	DePeyster, 2nd, Augusta	28
	DePeyster, F. Ashton	30
	DePeyster, Frances G.	28
	DeWeerth, Helen B.	920
	DeWolf, Francis E.	120
	DeWolf, Isabella C.	130
	DeMarest, William R.	5
	Dennis, Josephine R.	30
	Dering, Ella V.	317
	Dernell, Herman F.	12
	Dey, Anthony, dec.	403
	Dickerman, Caroline I.	15
	Dickerman, Elizabeth S.	10
	Dickinson, Harriet M.	30
	Dickson, Thos., dec.	101
	Dill, Josephine H.	202
	Dill, Mary A.	204
	Dill, Mary Muir	56
	Dill, Washington, dec.	202
	Ditmas, Margaret	23
	Dixcy, Adelaide G.	2
	Dixon, Ezra	115
	Dixon, John W.	20
	Dixon, M. Louisa P.	201
	Dixon, Sara E. (Miss)	20
	Dixon, Sarah M.	29
	Dixon, Wm. H.	20
	Dodd, Amzi T.	28
	Dodson, Robert B.	900
	Dolbeck, George N.	30
	Dolby, Edythe W.	102
	Dominick, A. deW.	115
	Dominick, Alice	29
	Dominick, Elsie	29
	Dominick, Wm. F.	29
	Dominick & Dominick	2,000
	Donnelly, Sarah B.	115
	Doolittle, Mary Isabel	127
	Doolittle, William S.	127
	Doolittle, Wm. S. & Julius T. A., Ttees u/w Julia T. Doolittle, dec.	126

Doringh, Frederika	29	Dyer, Marshall R.	115	475
Doringh, Pauline N.	23	Dyer, Solon S.	12	
Dotter, Chas. T.	58	Eaton, Alice Y.	115	
Doughty, Alice C.	230	Edgar, Louisa G.	29	
Doughty, M. Antoinette	5	Edge, Joseph Samuel	60	
Douglass, Mary S.	20	Edwards, Charles A.	50	
Douthirt, Louise G.	12	Edwards, Daniel, dec.	3,450	
Dow, Martha L., dec.	575	Edwards, Helen M.	288	
Dow, R. N., Excr. of Est. Martha L. Dow	125	Edwards, James H.	32	
Drake, Mary E.	101	Edwards, Margaret M.	31	
Dreier, Dorothea A.	92	Eicks, C. H.	230	
Dreier, H. E.	92	Eldridge, Roswell	2,000	
Dreier, Henry E.	23	Elliman, Theodora T.	207	
Dreier, Katherine S.	138	Elliott, Mary D.	23	476
Dreier, Mary E.	23	Ellis, Sophie B.	12	
Drury, Hannah W.	23	Ellsworth, Duncan S.	288	
Dubois, Herbert	115	Ellsworth, Elizabeth V. R.	184	
DuBois, Josephine	23	Ellsworth, J. Magee	200	
DuBois, Louis H.	180	Ellsworth, Julia M.	58	
DuBois, Mary E.	90	Ellsworth, James W. & Co.	300	
Dull, Helen Boyd	173	Elmer, Chas. J.	23	
Duncan, Katherine P.	81	Elms & Sellon,	1	
Dunham, Eliza	58	Emmet, Henry C.	115	
Dunham, Geo. H., dec.	690	Emmet, M. Louise	20	
Dunscomb, Marion C. E.	115	Emmons, K. P.	14	477
Duryee, Elisabeth S.	9	Englesby, Mary R.	115	
Duryee, Joseph R.	75	English, Sarah West	22	
Duryee, Joseph R., in trust Samuel S. Duryee,	9	Eno, Amos F.	13,000	
Duryee, Margaret V. N.	29	Erismann, Camille	5	
Duryee, Maria L.	9	Espy, Arthur	46	
Dutton, Anna V.	22	Evans, Annie M.	115	
Dwight, Jane W.	11	Evans, Florence C.	3	
Dyer, Arthur H.	32	Everett, Dorothy B.	10	
		Everson, Chas. B.	115	
		Everson, Helen S.	115	

478 Fahnestock, H. C. 4,350
Fahnestock, Snowden A. 115
Fahnestock, William 19[illegible]
Fahnestock & Co., 14,785
Faile, Chas. V. Sole surv. Ttee. u/w Thos. H. Faile, 138
Fairbairn, Robert A. 230
Falkner, Helen N. 5
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479 Farmers Loan & Trust Co., Trustee u/w of Adele B. Wolfe Clapp 87
Farmers Loan & Trust Co., Ttee. E. Agnew *et al.* 97
Farmers Loan & Trust Co., Ttee. Louisine W. Whaley 115
Farmers Loan & Trust Co., Ttee. Elward Smith, Jr. u/w E. Smith 26
480 Farmers Loan & Trust Co., Ttee. Frances C. Smith, etc. 76
Farmers Loan & Trust Co., Ttee. Jewett H. Smith, etc. 26
Farmers Loan & Trust Co., Ttee. Laurie Smith, etc. 27
Farmers Loan & Trust Co., Ttee. H. C. Bostwick u/w J. A. Bostwick 153
Farmers Loan & Trust Co., Ttee. E. A. Maxwell 15
Farmers Loan & Trust Co., Ttee. H. Wilson, dec. 80
Farmers Loan & Trust Co., Ttee. Alma Louise Larner 12
Farmers Loan & Trust Co., Sub. Ttee. Burnett Y. Tiffany Trust 100
Farmers Loan & Trust Co. & Raymond Hoagland, Ttees. Caroline C. Hoagland, etc. 1,150
Farmers Loan & Trust C., Ttee. Fanny M. Hoagland 1,150
Farmers Loan & Trust Co., Ttee. John A. Hoagland 1,150
Farmers Loan & Trust Co. & Margaret I. Chisholm, as Ttees. under last will & Testament Margaret L. Ingalls 78
Fay, Mary K. 8
Fenn, Hannah T. 23
Fearon & Co., Charles 100
Fenno, Mary H. (Mrs.) 11
Ferrer, Jose M. 115
Fidelity-Phenix Fire Ins. Co. N. Y. 4700
Fidelity Trust Co., Holsetin De Haven & Jos. C. Crawford, Ttees. u/w Winfield S. Wilson, dec. 200

Field, Cortlandt deP.	23	
Firemens Ins. Co., Newark	1,380	
Fish, Hamilton	23	
Fish, Hamilton & H. F. Webster, Ttees H. H. S. Northcote	23	
Fisher, Anna Margaret	51	
Fiske, Charlotte M.	76	
Fitch, Elizabeth J.	14	
Fitz-Gerald, Elizabeth J.	5	
Fitz-Gerald, Harriet M.	115	
Fitz-Gerald, Mary A.	115	
Fitz-Gerald, Mary C.	5	
Fitz Hugh, Isabella S.	46	
Foote, Edwin B.	460	
Forbes Chapel Fund of St. Pauls Parish	40	
Ford, James B.	383	
Ford, Jas. B., Ttee. u/w J. R. Ford for benefit of H. F. Herrick	383	
Ford, J. Howard	383	
Forsyth, Robert	460	
Foster, Edward W.	23	
Foster, Elizabeth S.	35	
Foster, Girard—Thos. Thacher & Frederick deP. Foster, Ttees. u/w Mary Van Nest	1,200	
Foster, Jean Van Nest	1,540	
Foster, Pierrepont B.	105	
Foulke, Anna C.	182	
Frame, Caroline W.	200	
Frank & Co., Charles A.	5	
Freeland, Mary D.	38	
Freeman, Alpheus	3	
Frelinghuysen, Estelle K.	701	
Friedman, Lewis	100	481
Friedman, Sol	200	
Frost, Russell	3	
Frost, Russell, Jr.	3	
Fry, Arthur V.	13	
Fryer, Robert L.	230	
Fuller, Lois Homans	100	
Gail, Helen C., F. H. Baugh & William C. Schmeisser, Ttees. u/w Geo. William Gail,	20	
Gambier, Edward V.	2	
Gambrill, Anna Van Nest	1,540	482
Gardiner, Jonathan T.	115	
Garr, Maude R.	195	
Garretson, Elizabeth C.	115	
Gaston, William A. & H. deForest Lockwood, Ttees. u/w Philip C. Lockwood,	190	
Geisinger, Abigail A.	1,150	
Gentle, Harriette V.	4	
Gentle, James M.	14	
Gibbens, Fredk. H.	58	
Gibbs, Edwin	1,762	483
Gibby, Janet & A. Edith Lester, Sub. Ttees. for Douglas Brown,	4	
Gibby, Janet G.	4	
Gifford, Livingston	115	
Gilbert, Alice C. (Mrs.) Gdn. Colgate Gilbert	15	
Gilbert, Bertha H.	173	
Gilbert, H. Cornelia	115	
Gilbert, Margaret R.	6	

484	Gilbert, Nelson R.	19
	Gildersleeve, Edwin C.	12
	Giles, Anna L.	115
	Gill, Sallie Howard	26
	Gillette, Wm. B.	18
	Gillilan, Wm.	1,380
	Gilman, William V.	10
	Gilmartin, John T.	27
	Gilmor, Florence H.	114
	Gilmor, Mary S.	117
	Gilmor, Sarah A.	117
485	Girard Life Ins., Annuity & Trust Co., Phila., Agt. for Willing Day Nursery,	11
	Glasby, Mary Belle	20
	Goetchins, Est. John M.	115
	Goldsmith, Moses	230
	Goodhart, Hattie L.	300
	Goodhart, Sophie L. (Mrs.)	230
	Goodhue, Sarah C.	230
	Goodrich, Lucy A.	230
	Goodridge, Margaret A., dec.	108
486	Gorton, Caroline S.	92
	Grandidier, Marie S.	19
	Grant, S. Wilhelmina	34
	Graves, Henry, Jr., & Geo., Coe., Graves, Ttees. u/w Henry Graves,	9,100
	Graves, Henry, Jr.	1,600
	Graves, Nellie J. (Mrs.)	6
	Greacen, Edward J.	230
	Green, Wm. A.	7
	Greene, Alice E.	5
	Greene, Augusta B.	50
	Greene, Helen M.	5
	Greene, Lelia S.	13
	Greene, Margaret H.	230
	Gregory, Chas.	100
	Gregory, Mary E.	115
	Griffen, Jos. C., dec.	58
	Griffith, Frank J.	12
	Griffith, Mary E.	12
	Griffith, Theodore W.	12
	Grimball, Charlotte M.	28
	Grinnell, Sarah J.	92
	Grinnen, Rose	3
	Guaranty Trust Co., N. Y., in trust for Helen G. Henry, etc.,	141
	Guaranty Trust Co., N. L., in trust for Margaret G. Colgate,	141
	Guiteras, Gertrude E.	193
	Guiteras, Ramon B.	9
	Guiteras, Ramon	95
	Gurney, Amelia F. D.	3
	Guthrie, Sarah H. W.	33
	Hadley, Aurelia R.	10
	Hagaman, Mary A.	15
	Hageman, Mary D.	92
	Hager, W. D., dec.	110
	Hager, Wilfrid M.	17
	Hahn, George	200
	Haight, Charles C.	23
	Haight, Garrett B.	23
	Haines, John P.	100
	Hale, Mary J.	144
	Hall, Sarah C. (Mrs.)	173
	Halsey, Caroline B.	12

Halsey, Cornelia U.	115	
Halsted, E. P.	12	
Hamilton, Wm. Pierson	12	
Hammer, Elizabeth R. (Mrs.)	28	
Hammerstein, William	100	
Hancy, Edward J.	130	
Hancy, Edward J. & Henry W. Taft, Ttees. u/w of Charlotte D. Ferry	100	
Harbach, Charlotte P.	29	
Harbach, Sophronia P.	34	
Harbach, William F.	33	
Hardenburgh, Adelaide C.	58	
Hardin, Mary S.	26	
Hardy—The, Lucien	15	
Hardy, Sylvia Fowler,	40	
Hare, J. M.—M.—Meredith & Wm. H., Ttees. u/w Mary M. Hare	40	
Haring, Bertha S.	15	
Harkness, Chas. W.	1,500	
Harkness, Edw. S.	500	
Harper, Mary E. Mills	48	
Harris, Adelaide B.	115	
Harris, Mary S.	11	
Harris, Winthrop & Co.	100	
Harrison, Birge	4	
Hartshorne, Robt.	153	
Hasbrouck, Jacob D.	58	
Hatch, Altha E.	69	
Hathaway Claudia Church	87	
Hauser, M. H.	6	
Haviland, Sara H.	2	
Hawes, Annie Stephens	92	
Hawley, Sarah A.	23	
Hayden, Stone & Co.	400	
Hayes, Caroline D., dec.	115	487
Hazard, Archibald M.	76	
Hazen, Maria Bell	748	
Hegeman, Benj. A., Jr., Ttee. under agreement between Chas. Matthews, Peter B. Matthews, Kate Greenough Hegeman & Benj. A. Hegeman, Jr., dated Mar. 30, 1910	500	
Helm, Emily M.	7	
Hemenway, A. — M. Gray, & J. C. Gray, Ttees. u/w A. Hemenway	1,150	488
Hencken, Hancke	230	
Hendrick, Olive A.	29	
Hendrick S. Elizabeth	29	
Hendrickson, Henry	17	
Henry, Catherine E.	49	
Henry, Helen G.	60	
Herrick, Sarah Reed	4	
Herriman, Helen	690	
Herriman, W. H.	1,840	
Herron, Jane Espy	44	489
Hessberg, Felix	20	
Hewitt, A. E.	230	
Hewitt, Amanda E.	115	
Hicks, Frederick C.	41	
Higgins, Eugene	14,663	
Higgins, John D.	25	
Higgins, Virginia K.	25	
Hillebrandt, Henrietta R.	24	
Hillebrandt, Marie L.	24	

490 Hillebrandt, Walter L. 24
Hillman, Arthur 6
Hillman, Edward D. 7
Hillman, Emily C. 7
Hillman, Ralf R. 7
Hillyer, Appleton R. 58
Hill, Charles H. 1
Hine, Mary I. 35
Hinkley, Margaret G. 10
Hinman, Belle Beard 230
Hiss, Caroline D. 230
Hitchcock, Francis R. 350
Hitchcock, Thos. 345
491 Hoag, Elizabeth F. 30
Hoag, Geo. A. 200
Hoagland, Raymond 1,265
Hoe, Olivia P. 282
Hoffecker, A. Frank 14
Hoffman, Francis B. 230
Holbrook, Alexander P. 115
Holbrook, Grace M. 58
Holcomb, Clara C. & Geo. H. Pettit, Ttees. u/w Marion E. Steers for Sarah Amelia White, 6
Holcomb, Henry V. 7
492 Holden, E. R. 2,300
Holden, Hendrick S. 288
Holden, Willis A. 288
Hollister, 2nd H. H. 20
Holmes, Emily L. 69
Holmes, Marion Fisher 115
Holton, Jane L. 124
Holt, Lucius Hudson 28
Homans & Co., 300
Homer, Annie B. 46
Homer, Robert H. 40
Hope, Florence T. 29
Hopkins, Chas. V. 4
Hopkins, Ferdinand T. 345
Hopson, Edwin N. 10
Hornblower, Emily S. 22
Horton, Martha T. 10
Horton, H. L. & Co., 58
Horton, Martha T. & Mary J. T. Pearce, Ttees. for David Floyd Jones Tait, u/w of Mary J. Tait 6
Hotchkiss, Dora A. 43
Hotchkiss, Henry L. 321
Hotchkiss, Marie Oakes, Ttee. u/w Mary A. F. Hotchkiss, 230
Hotchkiss, Susan V. 552
Houghton, James W. 115
Howard, Mary M. 14
Howe, Elizabeth B. R. 44
Howell, John T. 14
Howell, Josiah A. 15
Howell, I. V. 19
Howell, William E. 15
Howland, Agnes 23
Howland, Blanche 35
Howland, Edith 23
Howland, Emily 115
Howland, Sarah C. 444
Howland, Slocum 29
Howland, William 115
Howlett, Nattie S. 11
Hoy, Florence 23
Hubbard, Chas. W. 30
Hubbard, Elizabeth L. 5
Hubbard, Kate L. 58

Hubbard, Maude	3	Iselin, Caroline L.	58	493
Hubbard, Thomas H. & Robt. D. Weston, Ttees. u/w Florence DeW. Sampson for Lena Edge Sampson, *et al.*	200	Isham, Charles	46	
		Isham, Joanna A.	73	
		Isham, Samuel	46	
		Isham, Wm. B.	46	
		Ivory & Sime	276	
Hubbard, Ttees. for Mary Ware Sampson, etc.	100	Jackson, Alma deF. C.	46	
		Jackson, Esther L.	23	
		Jackson, Joseph C.	41	
Hubbell, Emily A.	10	Jackson, Joseph C., Jr.	35	
Hubbell, James P.	29	Jackson, Katharine P. D.	29	
Humphrey, Emily A. (Mrs.)	23	Jackson, Mary Van Nest	1,195	
		Jacobs, Elsie B.	10	
Humphreys, Lydia B.	29	Jacobus, Clara C. (Mrs.)	173	494
Hunnewell, H. H., dec.	230	James, Carlton	3	
Hunker, Jacob J.	23	James, Frederick P.	10	
Hunt, E. D. (Miss)	1,150	James, J. Arthur	575	
Hunt, Margarita Cress	14	Jaynes, Chas. E.	23	
Hunt, Nathaniel W., Est. of Brooklyn Trust Co., Ttee.	345	Jeanes, Edward K.	182	
		Jeanes, Isaac W.	67	
		Jefferys, Emma A.	20	
Hunter, Anna F.	76	Jenkins, Laura	76	
Hurd, Emily Elizabeth, dec.	46	Jenkins, Matthew C.	154	
		Jenkins, William B.	138	
Hurlbut, Elisha D.	22	Jennings, Chas. B.	127	
Hurlbut, Theodore D.	94	Jennings, Elizabeth A.	29	
Hussey, Elizabeth R.	23	Jesup, Maria DeWitt	1,725	495
Hutchins, Mary F.	23	Jewett, Anna L.	30	
Hyde, Elizabeth W.	275	Jewett, Geo. L.	115	
Industrial Trust Co., Prov., R. I.	575	Jewett, Georgiana A.	2	
		Jewett Brothers	2	
Industrial Trust Co., as Ttee. for Isoline N. & Hattie B. Barns	50	Johnes, Mary B.	23	
		Johnson, Florence F.	115	
		Johnson, Isabel G.	88	
Ingalls, Sallie A.	35	Jones, Maude V.	5	
Ingalls, W. B. B.	12	Jones, Sarah R. Drake	101	
		Joseph, Fannie S.	100	

Josephthal, Louchheim & Co. 100
Joubert, Isabella M. 3
Jube, Albert B. 200
Judson, Chas. B. 144
Judson, Mary Mack 12
Judson, Mary Mack, Excx. Est. J. Lee Judson, 40
Karsner, Caroline M. J. 182
Kase, Charles M. 115
Kayser, Julius 699
Keane, Zayas & Potts, 500
Keck, Margaret W. (Miss) 115
Keck, Thos. A. 115
Keck, Walter M. 127
Keech, Loew & Co., 1,148
Keene, Nat. Bank of Keene, N. H., 230
Keep, Ralph S. 58
Keep, Wallace I. 58
Kelchner, Helen V. 58
Kellogg, Ethel T. 3
Kellogg, Mary L. 92
Kemmerer, Mahlon S. 29
Kennedy, Mary L. (Miss) 345
Kerr, John Ernest 115
Kerr, Nora Margaret (Miss) 115
Kidd, Adeline Pumpelly 276
Kidder, Peabody & Co., 575
Kilburn, Chas. F. 28
Kilburn, Clara C. 28
Kilburn, Margaretta D. 28
Kilburn, Mary E. 28
Kimball, Eleanor A. 20
Kimber, Mary 23
Kinney, William B. 701
Kinsey, Frances T. (Miss) 5
Kinsey, Mary M. (Miss) 5
Kirkland, Rosalie Wilson 29
Kissam, Wm. Adams 690
Kittredge, Benjamin R. 23
Klee, Rudolph 58
Knapp, H. K. 600
Knapp, Margaret I. 230
Knauth, Nachod & Kuhne, 525
Knickerbacker, Helen L. 173
Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn, for Louisa A. Schermerhorn, 100
Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn, for Anna Margaret Fisher, 310
Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn, for Catherine E. Henry, 290
Knickerbocker Trust Co. & S. D. Ripley, Ttees. for Julien A. Ripley, 7
Knowlton, Anne G. 20
Knowlton, Eben J. 125

Krumbhaar, Edw. Bell	29	Lemierre, Jeanne R.	198	499
Krumbhaar, Susan N.	5	Leopold & Co., Jas. M.	776	
Kuykendall, Louise P.	12	Lester, A. Edith	4	
Laidlaw, Elizabeth Clark	58	LeSueur, Arthur	12	
Land Title & Trust Co., Ttee. V. B. Padelford,	14	Leverich, Mary E.	75	
Laning, Mary M.	22	Levi, Abram L.	20	
Laning, R. H., Ttee. Anna L. B. Humphrey,	22	Levi, Jules C.	20	
Laning, R. H., Ttee. heirs of Mary A. Elliott,	22	Levi, Lewis	50	
Lansing, Susan N.	5	Levy, E. S.	40	
Lapham, Cyrus E.	12	Levy, Leo	150	
Larned, Emma S.	46	Lewis, Edith R.	1	
Lasher, Alfred P.	125	Lewis, Frederic E.	4,621	
Lathrop, Isabel Stevens	40	Lewis, Percy P.	4,621	
Law, Est. of George	400	Life, William, dec.	115	500
Lawrence, Ann M.	3	Lindley, Charlotte Leroy	115	
Leake, Caroline R. (Miss)	92	Litchfield, Geo. A.	12	
Leake, Chas. R.	96	Litchfield, Grace D.	58	
Leake, Henry S.	92	Lochner, G. Emory	17	
Leake, Richard B.	23	Lochner, Jacob L., Jr.,	17	
Learned, Katharine D. W.	15	Lochner, J. Edward	17	
Leavenworth, Susie E.	11	Locke, Geo. L.	12	
Leavitt, Amelia W.	460	Lockwood, Carrie A.	30	
Lederer, Lucye Pinchot	58	Lockwood, Fredk. A.	6	
Ledoux, Albert R.	58	Lockwood, & Co., F. M.	100	
Lee, Anna E.	18	Lockwood, Julia Belden	29	501
Lee, John R.	100	Lockwood, Manice DeF.	110	
Lee, Mary S.	72	Lockwood, Thomas W.	23	
Leisenring, Mary A., dec.	23	Lockwood, William B. E.	20	
		Lodewick, Mary E.	46	
		Logan & Bryan,	300	
		Loney, Catharine Wolfe	115	
		Look, David M.	1,000	
		Loring, Geo. H.	69	
		Lovatt, Fred J.	4,600	

502	Loveland, Chas. N.	89	Magee, Emma S.	157
	Loveland, George, dec.	420	Magee, Geo. J., Jr.,	84
	Loveland, Josephine N.	147	Magee, John	2,078
	Loveland, William, dec.	38	Mahany, David	1,840
	Lowitz, R. M.	50	Mahany, Ellen Annie	690
	Ludlow, Henry S.	403	Mairs, Wm. H.	1,380
	Lung, H. Van C.	28	Makepeace, Lucetta B.	15
	Luscomb, Martin	46	Malcom, Marguerite	6
	Lyle, Louisa T.	11	Mallery, Jeannie T.	115
	Lynch, P. J. M. D. dec.	115	Manchester, Abraham	23
	McBee, Louise P.	57	Manning, John B.	2,985
	McBride, Julia A. Rust	81	Manning, Jos. J.	60
503	McClintock, Andrew H.	403	Manson & Co., Thos. L.	150
	McCorkle, John A., M. D.,	104	Markham, Laura S. (Miss)	32
	McCormick, Mary Boyd	173	Marling, Chas. E.	100
	McCrillis, John	15	Marquand, John B.	2
	McCrum, Leslie M.	109	Marsh, Daniel E.	14
	McCully, Francis K.	250	Martin, Louise R.	86
	McCurdy, Caroline G.	7	Martin, Serena A.	21
	McCurdy, Henderson & Co.,	200	Marvin, Dwight E.	78
	McGaw, Est. John A.	150	Marvin, Frederic R.	77
	McGregor, Austen H.	26	Marvin, Elizabeth V. N.	287
	McHatton, Eliza H.	7	Mason, Arthur P.	50
504	McKeever, Marie V. B.	30	Mason, Henry Edgar	173
	McKinley, Minerva C.	100	Mason, Martha R. F.	158
	McLaughlin, Chester B.	700	Mathews, Anna M.	22
	McLean, Harriet Maynard	46	Mathews, K. P. in trust for Edw. N. Mathews,	1
	McMurtry, Letitia	92	Mathewson, Marion	5
	Mabbatt, Josephine H.	22	Mathewson, Mary E. as per deed of trust 1/18/04	700
	MacDougall, Marianna C.	287	Matthews, Chas.	75
	Mackay, Helen G.	288	Mattison, Ellen D. (Mrs.)	38
	Mackie, David Ives	2		
	Mac Martin, Malcolm	46		

Maund, Elizabeth A.	55	Meyer, Chas. F. & Fred H. Baugh & Wm. Schmeisser, Ttees.	505
Maund, Margaret E.	62		
Maury, Kate Carroll	3		
Maury & Auchincloss,	115	Chas. F. Meyer	2
Maxwell, Henry L.	300	Meyer, Ella F. Meyer	5
Maxwell, Howard W., John R., Jr. & Henry L. Ttees. u/w J. Rogers Maxwell, for Louise Maxwell Whitney	50	Meyer, Ella F.	3
		Meyer, Francis T.	56
		Meyer, Henry C., Jr.	56
		Meyer, Leopold	230
Maxwell, Howard W.	300	Meyer, Louise U. (Mrs.)	10
Maxwell, John R., Jr.	115	Meyers, Alice G.	23
Maxwell, Lydia Clothier	6	Migeon, Elizabeth F.	100
Maxwell, Maria L.	200	Millard, Alice D.	35
Maxwell, Mary A.	104	Miller, Daniel S.	30 506
Mayer, Alfred G.	7	Miller, Geo. A., Jr.— Jas. H. Wainwright, J. Vimont Lyle, Excrs. Est. Geo. A. Miller	12
Maynard, Samuel R.	200		
Meeks, Caroline C.	14		
Mehaffey, Geo. W.	12		
Mehaffey, William A.	12	Miller, Howard E.	26
Menzies, Chas. D. & J. Wilson Brodie	200	Miller, J. Wesley	29
		Miller, Louesa A.	28
Mercantile Trust Co. as sub-Ttee. u/w W. J. Haddock	100	Miller, Maria Louise, dec.	287
		Miller, Mary W. (Miss)	58
Meredith, Wm. T. & Co.	257	Miller, Seward A.	26
Merritt, Douglas—John P. Haines & John M. Knox, Ttees. under deed of trust, etc.	200	Mills, Priscilla	3
		Miners Savings Bank of Wilkes-Barre, Ttees. Est. S. H. Woodbury	507
			90
Merritt, Elizabeth C.	80	Miniere, Jules	78
Meserole, Cornelia P.	431	Minor, Lottie S.	32
Metcalf, Mabel W.	14	Mitchell, Clarence Blair as sole Ttee. u/w John I. Blair	200
Metropolitan Museum of Art	1,209		
Mettler, Geo. N.	46	Mitchell, Cora Reed	8
Meyer, Chas. F.	8	Mitchell, Grove P.	58

508 Mitchell, Lillian T. 1,265
Mittendorf, Ellen M. 1,840
Mixter, Wm. G. 92
Moore, Ada Small 1,150
Moore, Grace Perkins (Mrs.) 16
Moore, James Hobart 2,530
Moore, Orrin W. & Kate B. DeLano 109
Moore, William H. 7,705
Moore & Schley 2,200
Morris, Lucy A. 345
Morrison, L. W. 58
509 Morss, Emily G. 2
Morton, Levi P. 100
Morton, Mary E. 181
Moseley & Co., F. S. 345
Mosle, Katherine H. 100
Moss, Grace A. Bulkley 173
Mott, Emma A. (Miss) 43
Mott, George S. 29
Mott, Joseph A. 30
Mott, Percy S. 42
Moulton, Catharine T. 4,621
Mourraille, Elise M. (Mrs.) 19
Mowry, Est. Wm. C. 138
510 Mulford, Lewis J. 50
Mulford, Madeleine D. 50
Muller, Elizabeth W. 96
Muller, Margaret L. 97
Mumford, Clara G. 200
Mumford, Thos. J. 5,000
Murray, Ambrose S., Jr. 20
Murray, Ambrose S., Jr. Ttee. u/w Ellen Murray Beam 19
Murray, Frank W. 20
Murray, Geo. W. 20
Murray, James Burch 58
Murray, Libbie McClure, Excx of Est. of Hiram McClure 14
Murray, Russell 20
Murray-Taylor, Gertrude 20
Mutual Life Ins. Co. N. Y. 10,005
Myers, Marcus A. 750
Nash, Myles 2
Nash, James R. 58
Nelson, Walter G. 200
Nesmith, Mary (Miss) 3
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New York Life Ins. & Trust Co., Ttee. for Carolyn E. Prentice	115	Otto, Janette C.	2		
New York Life Ins. & Trust Co., Ttee. for Juliette T. Benedict	115	Owen, Francis T., dec.	287		
New York Life Ins. & Trust Co., Ttee. for u/w Charlotte M. Goodridge	57	Paine, John W.	300		
New York Life Ins. & Trust Co., Ttee. for Mary T. Sands	115	Paine, Martha L. G.	120		
New York Socy. for Relief of Ruptured and Crippled	345	Palmer, Julius	115		
Nichols, Edwin	5	Palmer, Laura A.	690		
Nichols, Frank	5	Palmer & Co.	1,200		
Nichols, John	8	Palmer, N. F. & A. R. McCanless, Ttees. Florence E. McGregor	200		
Nisbet, Theodore B.	12	Palmer, N. F. & A. R. McCanless, Ttees. Geo. W. Quintard,	200	512	
Norrie, Eloise L. Breese	460	Palmer, N. F. & A. R. McCanless, Ttees. H. B. Quintard,	200		
Norris, Harriet R.	20	Palmer, N. F. & A. R. McCanless, Ttees. Frances A. Safford,	200		
North, Edward, dec.	35	Palmer, N. F. & A. R. McCanless, Ttees. Geo. W. Quintard, under 9th Clause	75		
North River Insurance Co., The	200	Palmer, Stephen S.	509		
Nottingham, Eloise	288	Paraf, Eugene, Ttee. u/w Anthony Pollok,	212	513	
Nourse, Julia L.	168	Parrott, Helen L. (Mrs.)	29		
Noyes, Charles P.	200	Parsons, Francis	92		
Oakes, Mary J.	23	Parsons, Wm. Decatur	58		
Oakley, Annie M.	107	Parsons, Closson & McIlvaine,	20		
Olmsted, W. D.	115	Paterson Safe Deposit & Trust Co.,	460		
Osborne, Nancie C.	46	Patrick, Annie V. (Mrs.)	2		
Ostheimer, Blanche, Ttee. u/w Anthony Pollock	351				
Ostheimer, Robert G.	70				

514 Patrick, Cornelia V. (Mrs.) 2
Patten, Freeman F. 58
Patterson, Grace H. L. 130
Paxson, Elliott D. 23
Payne, William G. 230
Peabody, Philip G. 33
Pearce, Mary J. T. 12
Pearce, Mary J. T. & Martha T. Horton as Ttees. for Maria E. Outhouse, u/w John J. Tait, dec. 8
515 Peck, Edward E. 17
Peck, Mary (Miss) 20
Peirce, Eliza C. 12
Pell, James D. 10
Pelton, Henry V. 127
Peltz, Wm. Law Learned 17
Pendleton, Arthur T. 175
Penfold, Wm. Hall 230
Penniman, Louise D. 46
Pennington, Mary Vanderpool 20
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516 The Penna. Co. for Ins. on Lives, etc., & Wm. L. Brown, Ttees. for Clarence H. Brush, 145
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Peters, Joanna 15
Peters, Wm. S. 1
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Phillipps, Evangeline, dec. 69
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Pierson, J. Fred 33
Pinney, Maria W. 69
Pinney, Royal W. 253
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Wilson, Mary H. 23
Wilson, William C. 7

Winthrop & Co., Robt.	183	Wright, Anna F.	145	553
Wisdom, John L.	2	Wright, Lucy M.	84	
Wolcott, Mary H.	58	Wyckoff, Clarence P.	3	
Wolfe, Sarah C.	128	Wyckoff, Emma M.	84	
Womans Seamens Friend Socy., Ct.	40	Wyeth, Charlotte G.	173	
Wood, Arthur H.	6	Wyeth, Fannie O.	23	
Wood, Mary Anna	6	Wysong, Martha M.	748	
Wood, Sarah	115	Young, Benjamin S.	2	
Woodmansee, Bernis L.	2,085	Young, Caroline E.	54	
Woodruff, Catherine S.	22	Young, Caroline M.	2	
Woodruff, Caroline T.	15	Young, Marie Hunt	460	
Woodruff, Ida E. (Mrs.)	127	Youngs, Robert M.	400	
Woodruff, Mary B.	76	Zabriskie, Andrew C.	1,150	
Woodward, William	30	Zabriskie, Eliza B.	14	554
Work, Frank Est.	11,500	Zabriskie, Henry Lyles	25	
Worrall, Lydia Malcom	3	Zabriskie, Jennie A.	12	
Worthington, John	35	Zabriskie, N. Lansing	14	
		Unclaimed account	64	

Petitioner's Exhibit P4.—The Delaware, Lackawanna and Western Coal Co. List of Stockholders, December 31st, 1912.

Abbott, J. H.	50	Affleck, J. G.	10	
Abeel, Margaret H.	4	Affleck, Mary S.	4	
Abercrombie, Mathilde U.	15	Affleck, William	8	555
Abercrombie, W. H.	30	Aged Women's Home of Montgomery Co., in State of Pennsylvania	3	
Aborn, Carlton, N.	10	Agnew, Est. Mary H.	50	
Aborn, James A.	10	Agnew, Mary Nash	24	
Ackerman, Louise S.	5	Alexander, Archibald S. Est.	50	
Adams, Julia M.	7	Alexander, Florian, as Ttee. of Eve Alexander, dec.	18	
Adams, Sarah P.	21			
Adriance, Francis H.	19			
Adriance, John E.	25			
Affleck, Est. Frank B.	6			

556	Alexander, Victor F.	25
	Alexandre, Pauline Onativia	33
	Allen, Christopher	13
	Allen, Est. Geo. B.	5
	Allen, Martin S.	8
	Allen, Wm. L.	8
	Allen, Z. Nelson	8
	Ames, Elizabeth C.	32
	Anderson, Phebe L.	5
	Andrews, Charlotte H.	7
	Andrews, J. Sherlock	38
	Appleton, Nina H.	168
557	Armstrong, Milton N.	14
	Arnold, Annie S.	13
	Arnold, Frank & Eli Kirk, Price, Ttee. u/w E. Padelford,	3
	Arthur, C. A.	25
	Astor, William Waldorf	1,553
	Atherton, Louis M.	1
	Atlantic Mutual Ins. Co.,	450
	Auchincloss, E. Ellen	3
	Ayars, Clare H.	5
	Ayres, Emma L. C.	2
	Ayres, Mary Butler	10
558	Bagg, Mary C. Clapp	10
	Bailey, Charles M.	25
	Bailey, Sarah C.	18
	Baird, Alice M.	6
	Baker, Agnes A.	6
	Baker, Est. Anna B.	10
	Baker, Elsie L.	3
	Baker, Geo. F.	10,000
	Baker, Jr., Geo. F.	34
	Baker, H. P.	3
	Balch, Alice M.	5
	Balch, Alice M. & Grace P. Balch,	1
	Balch, Grace P.	5
	Baldwin, Sarah J. Y.	8
	Ballantine, Jeannette	50
	Ballou, Est. Leonard	20
	Bangs, Anna D.	3
	Banks, David	3
	Barnes, Ellen S.	10
	Barney, Mary Alice	75
	Barns, Hattie B.	38
	Barns, I. N.	37
	Barns, Isoline N. & Hattie B. Barns, Ttees u/w Elizabeth A. Barnes,	6
	Barnum, Noah S.	20
	Barron, Lizzie	12
	Barto, Hattie W.	28
	Barton, Edward D.	8
	Barton, Geo. F.	8
	Barton, Seth	15
	Bartram, Alice A.	14
	Bartram, Harry E.	2
	Bartram, J. Percy & Sarah J. Bartram, Ttees. for benefit Mary B. Woodruff,	9
	Bartram, Est. Sarah J.	26
	Bassett, Margaret K.	152
	Bastian, Sovina P.	3
	Battell, R. & J. W. Stewart, Ttees. for Jos. Battell,	45
	Battell, R. & J. W. Stewart, Ttees. for Alice B. Aldridge,	42

Battell, R. & J. W. Stewart, Ttees. for Isabella P. Eldridge,	44	Bell, Edward J.	1	559
Battell, R. & J. W. Stewart, Ttees. for Mary Eldridge,	44	Bell, Gordon Knox	13	
Battell, R. & J. W. Stewart, Ttees. for Irene B. Swift,	41	Bell, James S.	50	
Baylis & Co.,	1	Bell, Laura B.	13	
Beach, Elizabeth C. J.	4	Bell, Mary	50	
Beadleston, Edith	25	Bell, Sarah E.	25	
Bear, J. Ainslie	1	Bell, Stirling	6	
Beardsley, Morris B., Ttee under Sect. V. of will of Anna M. Bartram for Alice A. Bartram *et al.*		Benet, Imlay L.	6	
		Benet, Lillian	9	
		Bennett, Charles H.	3	
		Benson, Oscar F.	13	
		Benson, Sarah L.	9	
		Berard, Frances A.	13	
		Bermingham, John F.	50	560
		Betts, L. F. H.	100	
		Betts, W. Rosseter	1	
		Biglow, Anna G.	3	
	24	Billard, John L.	25	
		Bishop, Bertha L.	4	
		Bishop, Herbert M.	38	
		Bishop, Jane M.	38	
		Bishop, Louis B.	38	
Beardsley, Morris B. Ttee. under 1st codicil of will of Anna M. Bartram for benefit Edwin T. Bartram *et al.*		Blair, C. Ledyard	1,000	
	24	Blair, Woodbury	3	
Becker, Margaret J.	13	Blair, Woodbury Ttee. for Virginia W. Lowery Brunetti	38	561
Beckwith, Daniel	7			
Bedell, Abner K.	82			
Bedell, Emeline Reed	5	Blanchard, Albert H.	200	
Bedell, Margaret S.	7	Blumenthal, Geo.	2,324	
Bedell, Mary	8	Blunt, Albert C.	25	
Beebe, E. P. & F. C. Welch, Ttees. u/w J. M. Beebe,	71	Blunt, Est. Margaret A.	10	
Beecher, Mary G.	8	Boissevain, Arabella M.	14	
Bequelin, H. Robert	50	Bond, Est. Riley W.	5	
Bell, Bertrand F.	13	Bonnell, David W.	29	
		Bonnell, Emmaline	7	

562 Bostwick, Delia F. 1
Boswell, Sarah H. 2
Bourne, F. G. 500
Bourne, Sarah F. 19
Bowdoin, Geo. S. 250
Boyd, Elizabeth 5
Boyd, Elsie M. 12
Boyd, Ida C. 12
Boyden, Charles 8
Bradford, Est. Matilda R. L. 9
Bradley, Est. Mary C. S. 8
Brady, Anthony N. 125
563 Bragadir, Yvonne Richelot 13
Brainerd, Ida G. 5
Brawley, Kittie 25
Breese, James L. 50
Brewster, Elizabeth 5
Brewster, Harriet J. 32
Brewster, Mary E. 3
Bridgham, Fanny 18
Bridgham, Sam'l W., John I. Kane & Chas. L. Carpenter as Ttees. Fanny Bridgham, etc. 35
564 Bridgham, Sam'l W., John I. Kane & Chas. L. Carpenter as Ttees. Annie C. Kane, etc. 35
Brigham, Helen T. 13
Bright, Osborn W. 25
Brinck, Adelaide E. 3
Bristol, Fanny L. 5
Bristol, John W. 9
Bristol, Mary B. 9
Brittin, Virginia F. 100
Britton, Harriet Louise 21
Britton, Nathaniel L. 20
Britton, Richard H. 21
Bromley, Frances P. 1
Bronson, J. Hobart 75
Bronson, Jennie C. 25
Bronson, Margaret L. 25
Brookman, Marion P. 535
Brooks, H. Mortimer 75
Brooks, Josephine 2,263
Brooks, Reginald 275
Brown Bros. & Co. 145
Brown, Chester W. 1
Brown, Cyrus C. 3
Brown, Est. Elon G. 29
Brown, M. Bayard, 300
Brown, Stewart, 10
Brown, Jr., W. Harman 5
Bruce-Brown, David Loney de. 25
Bruce-Brown, William 25
Brunetti, Virginia W. L. 25
Bryce, Harriet T. 12
Buchanan, Anne M. 7
Buckley, Charles R. 13
Buckley, John D. 13
Bulkley, Benj. A. 135
Bulkley, Jonathan, 38
Bulkley, Moses & Jonathan, Ttees. for Grace A. Bulkley 75
Bulkley, Moses & Jonathan, Ttees. for Theodora Bulkley 75
Bulkley, Theodora 38
Burke, Charles C. 90

Burke, Elizabeth W. 100
Burke, Eugene S. 2
Burke, Geo. W. 25
Burr, William 4
Butler, Est. Charles A. 50
Butler, Frances H. 4
Butler, Julia H. 50
Butler, Jr., Wm. Allen 25
Butler, Herrick & Kip 10
Butter, Chas. A. J., J. Wm. Clark *et al.*, as Ttees. under antenuptial settlement between Agnes M. Clarke & Chas. A. J. Butter 13
Butts, Mary 50
Cabot, Louis 81
Cachard, Caroline 25
Cadwalader, John L. & Geo. W. Wickersham, Ttees. for Wm. Cutting 25
Camp, Theo. C. & Geo. X. McClanahan, Ttees. under 10th clause of will, etc., Caroline W. Baldwin 60
Campbell, Emeline C. 8
Campbell, Louise H. 9
Candee, Est. Louise N. 8
Cantellauve, M. A. R. deV. 17
Carberry, John D. 25
Carey & Co., H. T. 298
Carhart, Marion B. 371
Carnochan, Frances A. 36
Caron, Mary H. 3 565
Carroll, Chas. 20
Carter, John Alanson 25
Carter, Robert 25
Case, Mary A. 7
Castelli, Enrico (Baron) 100
Central Trust Co. of N. Y., Ttee. for John G. Cress 3
Chambers, Catherine De Witt 28
Chandler, Randolph H. 3
Chapman, Ellen T. 25
Chapman, Est. Esther 7 566
Chapman, Harry E. 25
Chapman, W. H., adm. Est. Eunice F. Hawley 1
Chapman & Seaman 200
Chauncey, Mary L. 17
Choate, Joseph H. 125
Church, Chas. E. 19
Cilley, F. H. 1
Clark, David Burnett 10
Clark, Edward 5
Clark, Ellen M. 15
Clark, Henry I. 10
Clark, Henry I. & Wm. L. Clark, Ttees. for Catherine C. Bothwell 10 567
Clark, Ttees. for Mary C. Kerr 10
Clark, Horace B. 7
Clark, J. William 13
Clark, Mai K. 152
Clark, Matilda R. 7
Clark, Theo. S. 125
Clark, William L. 10

568 Clarke, Anna M. 20
Clarke, Sarah H. 9
Clarkson, Banyer 8
Clarkson, Matthew 25
Clausen, Sarah G. 10
Clawson, Louisa 4
Clement, Jesse B. 100
Clement & Whitney 2
Cleveland, Frances E. 3
Clinton, Charles 1
Cobb, Augustus G. 50
Cobb, E. Benedict 50
Cohen, Wm. N. 50
569 Colby, L. St. Clair 3
Cole, Anna Tailer 33
Colgate, Margaret G. 143
Collins, Minturn Post, Ttee. for Flora I. Collins 10
Colony, Horatio 100
Colt Bequest, The Ttees 12
Colt, Est. Elizabeth H. 3
Colt, Harris D. 4
Colt, Mary Sloan 11
Colton, Caroline West 13
Colton, Catharine 20
570 Colton, Chas. S. 50
Colton, Katherine V. 35
Colton, Mary B. 45
Columbia College in the City of New York, Ttees. for 26
Comer, Est. John H. 13
Commercial Trust Co., of N. J., Subs't Ttee. for Helen H. Falkner 13
Commonwealth Title Ins. & Trust Co., Gdn. of Geraldine M. Hubbard 1
Conklin, James W. 6
Conklin, Mary P. 3
Connecticut Trust & Safe Deposit Co., Ttee. for Clara Pond Porter u/w Chas. F. Pond 11
The Continental Ins. Co. 585
Cook, Alice I. 5
Cook, Est. Caroline 13
Cookingham, Maria T. 15
Cooley, Charles P. 38
Corning, John J. 500
Corning, Mary I. 25
Corse, Frances 5
Cortelyou, Peter 22
Coryell, Est. Torbert 2
Cotting, Chas. E. & Chas. Boyden, Ttees., etc. 5
Coursen, Ella S. 7
Cox, Est. Mark T. 26
Coxe, Maryette A. 28
Cramer, Harriet L. 7
Crane, Annie F. 10
Crawford, Sallie P. 14
Cress, Cornelia G. 3
Crimmins, Julia T. 20
Culbertson, Emilie P. 2
Curtis, Ariana R. W. 25
Curtis, Lisa 25
Curtis, Louise Burleigh 50
Curtis, Mary C. W. 5

Curtis, Est. Samuel	23	De Peyster, Frances G.	7	571
Curtis, Wm. J.	50	Dering, Ella V.	69	
Cushman, Belle V.	12	Dernell, Herman F.	5	
Cutting, Churchill H.	1	De Weerth, Helen B.	200	
Daly, David R.	5	Dey, Est. Anthony	88	
Damon, Est. W. E.	185	Dickson, Est. Thomas	22	
Dana, Caroline B.	9	Dill, Edmund M.	12	
Danesi, Est. Mary	6	Dill, Josephine H.	44	
Darling, Frances M. D.	9	Dill, Mary A.	45	
Darling, Thos., Ttee. Frank D. Cooley	2	Dillon, Kathryn	8	
Davidson, George	3	Dixcy, Adelaide G.	3	
Davis, Margaret A.	1	Dixon, Ezra	25	
Davis, Margaret H.	9	Dixon, John W.	5	
Davis, William L.	6	Dixon, M. L. P.	44	572
Davison, H. P.	3	Dixon, Sara E.	5	
Day & Co., R. L.	10	Dixon, Sarah M.	7	
De Arroyo, Renee P.	5	Dixon, William H.	5	
De Coppet & Doremus	75	Dodd, Amzi T.	6	
De Gardereins, M. R. E. R. deV.	17	Dodd, Gertrude	22	
De Heredia, Georgie B. C.	62	Dodd, Jr., John M.	17	
De Kergorlay, Comtesse Mary Louisa	6	Dobson, Robert B.	200	
Delafield, Violetta W.	75	Dolby, Edythe W.	22	
Delanoy, Edwin P.	8	Dominick, Alice	7	
De La Porte, Helen Reed	7	Dominick, A. DeW.	25	
Delaroche-Vernet, Suzanne	46	Dominick, Elsie	7	
De Las Casas, Carmen A.	7	Dominick, Wm. F.	7	
De Laugier Villars, Carola L.	10	Donnelly, Sarah B.	25	573
Dennis, Josephine R.	10	Doolittle, Mary Isabel	28	
De Perinat, Carmen Terry	250	Doolittle, W. S.	28	
De Peyster, Augusta 2nd	7	Doolittle, W. S. & Julius T. A. Doolittle, Ttees. u/w Julia T. Doolittle, dec.	28	
De Peyster, F. Ashton	6	Doringh, Frederika	7	
		Doringh, Pauline N.	27	
		Dotter, Chas. T.	18	
		Doughty, Alice C.	50	
		Doughty, M. Antoinette	1	

574 Douthirt, Louise G. 3
Dow, Est. Martha L. 125
Dow, R. K. Excr. Est. Martha L. Dow, 25
Dowson, E. Effie 1
Drake, M. E. 22
Dreier, Dorothea A. 20
Dreier, H. E. 20
Dreier, Henry E. 5
Dreier, Katherine S. 30
Dreier, Mary E. 5
Drury, Hannah W. 5
Du Bois, Herbert 25
575 Du Bois, Josephine 5
Du Bois, Louis H. 40
Du Bois, Mary E. 20
Dull, Helen Boyd 38
Dumont, H. K. 10
Duncan, Alex. L. 25
Duncan, Katherine P. 18
Dunham, Eliza 13
Dunham, Est. Geo. H. 150
Dunn, Mary E. 10
Dunscomb, Marion C. E. 25
Duryee, Joseph R. 15
Dutton, Anna V. 5
576 Dyer, Arthur H. 5
Dyer, Solon S. 3
Eaton, Alice Y. 25
Edey, Brown & Sanderson, 125
Edgar, Louise G. 7
Edge, Joseph Samuel 50
Edwards, Charles A. 21
Edwards, Est. Daniel 750
Edwards, Helen M. 63
Edwards, James H. 7
Edwards, Margaret M. 7
Eicks, Est. Casper H. 50
Elbert, J. N. 3
Eldridge, Roswell 400
Elliman, Theodora T. 45
Elliott, Mary D. 5
Ellis, Sophie B. 3
Ellsworth, Duncan S. 63
Ellsworth, Elizabeth V. R. 40
Ellsworth, Julia M. 13
Ellsworth, J. Magee 23
Elmer, Chas. J. 5
Emmet, Henry C. 25
Englesby, Est. Mary R. 25
Eno, Amos F. 2,920
Erismann, Camille 1
Espy, Arthur 10
Eustis, Augustus H. 27
Eustis, Frederick A. 27
Evans, Annie M. 25
Evans, Florence C. 1
Everson, Chas. B. 25
Everson, Helen S. 25
Fahnestock, H. C. 2,250
Fahnestock, Snowden A. 25
Fahnestock, Wm. 42
Fahnestock & Co., 3,388
Faile, Chas. V., sole surviving Ttee. u/w Thos. H. Faile, 30
Fairbairn, Robert A. 50
Fall Brook Coal Co., 255
Farley, Est. Elizabeth L. 4
Farmers Loan & Trust Co., Ttee. for E. Agnew *et al.*, 21

Farmers Loan & Trust Co., Ttee. for Louisine W. Whaley,	25	
Farmers Loan & Trust Co., Ttee. for Elward Smith, Jr., u/w E. Smith,	6	
Farmers Loan & Trust Co., Ttee. for Frances C. Smith, etc.,	17	
Farmers Loan & Trust Co., Ttee. for Jewett H. Smith, etc.,	6	
Farmers Loan & Trust Co., Ttee. for Laurie Smith, etc.,	6	
Farmers Loan & Trust Co., Ttee. for H. C. Bostwick *et al.*, u/w J. A. Bostwick,	34	
Farmers Loan & Trust Co., Ttee. u/w. E. A. Maxwell,	4	
Farmers Loan & Trust Co., Ttee. u/w H. Wilson,	18	
Farmers Loan & Trust Co., Ttee. for Alma Louise Larner,	3	
Farmers Loan & Trust Co., Ttee. u/w Adele B. Wolfe Clapp,	20	
Farmers Loan & Trust Co., & Raymond Hoagland, Ttees. Caroline C. Hoagland, etc.,	250	
Farmers Loan & Trust Co., & Raymond Hoagland, Ttees. Fanny M. Hoagland, etc.,	250	577
Farmers Loan & Trust Co., & Raymond Hoagland, Ttees. John A. Hoagland, etc.,	250	
Farmers Loan & Trust Co., & Margaret I. Chisholm, Ttees. u/w Margaret I. Ingalls,	17	578
Fenn, Hannah T.	38	
Fenno, Mary H.	3	
Ferrer, Jose M.	25	
Fidelity-Phenix Fire Ins. Co.	1,165	
Field, Cortlandt de P.	5	
Firemen's Ins. Co. of Newark	300	
Fish, Hamilton	5	
Fish, Hamilton & H. F. Webster, Ttees. H. H. S. Northcote	5	
Fisher, Anna M.	86	579
Fiske, Charlotte M.	17	
Fitch, Elizabeth J.	3	
Fitz Gerald, Harriet M.	25	
Fitz Gerald, Mary A.	25	
Fitz Hugh, Isabelle S.	10	
Fletcher, Allan N.	25	
Foote, Est. Edwin B.	100	
Forbes Chapel Fund of St. Paul's Parish	9	
Ford, James B.	84	

580	Ford, James B. Ttee. u/w J. R. Ford for benefit of H. F. Herrick	84
	Ford, J. Howard,	83
	Ford, Sarah C.	49
	Forsyth, Robert,	100
	Foster, Edw. W.	5
	Foster, Elizabeth S.	8
	Foster, Jean Van Nest	400
	Foster, Pierrepont B.	175
	Foulke, Anna C.	40
	Frame, Caroline W.	75
581	Freeland, Mary D.	9
	Freeman, Alpheus	1
	Frelinghuysen, Estelle K.	152
	Frost, Russell	1
	Frost, Jr., Russell	1
	Fryer, Robert L.	50
	Fuller, Lois Homans	20
	Gail, Helen C.	5
	Gambier, E. V.	1
	Gambrill, Anna Van Nest	400
	Gardiner, Jonathan T.	25
	Garr, Maude R.	74
582	Garretson, Elizabeth C.	25
	Gaston, William A. & H. de Forest Lockwood, Ttees. u/w Philip C. Lockwood	13
	Geisinger, Abigail A.	250
	Gentle, Harriette V.	1
	Gentle, James M.	3
	Gibbens, Frederick H.	20
	Gibbens, Isabel C.	20
	Gibbs, Edwin	384
	Gibby, Janet G.	1
	Gifford, Livingston	25
	Gilbert, Alice C. Gdn. Colgate Gilbert	4
	Gilbert, Est. Elizabeth R	4
	Gilbert, H. Cornelia	25
	Gilbert, Nelson R.	3
	Giles, Anna L.	25
	Gill, Sallie Howard	43
	Gillette, Wm. B.	4
	Gillilan, Wm.	300
	Gilmartin, John T.	28
	Gilmor, Florence H.	25
	Gilmor, Mary S.	26
	Gilmor, Sarah A.	26
	Glasby, Mary Belle	5
	Goetchius, Est. John M.	25
	Goldsmith, Moses	50
	Goodhart, Hattie L.	75
	Goodhart, Sophie L.	50
	Goodhue, Sarah C.	50
	Goodrich, Lucy A.	50
	Goodridge, Margaret A.	13
	Goodsell, Mary A.	60
	Gorton, Orren A.	20
	Grace, William	100
	Grandidier, Marie S.	4
	Grant, S. Wilhelmina	8
	Graves, Jr., Henry	250
	Graves, Jr., Henry & Geo. Coe Graves, Ttees. u/w Henry Graves	1,975
	Graves, Nellie J.	2
	Greacen, E. J.	50
	Green, Wm. A.	2

Greene, Alice E.	1	Hancy, Edward J. & Henry W. Taft, Ttees. u/w Charlotte D. Ferry	25	583
Greene, Augusta B.	25			
Greene, Helen M.	1			
Greene, Inslee Blair	1			
Greene, Margaret H.	50	Handley, Mary L.	2	
Greene, William A.	1	Harbach, Sophronia P.	7	
Greenebaum, F. H.	7	Harbach, Wm. F.	7	
Gregory, Chas.	25	Hardenburgh, Adelaide C.	13	
Gregory, Mary E.	25	Hardin, Mary S.	6	
Griffen, Est. Joseph C.	13	Hardy—The, Lucien	25	
Griffith, F. J.	3	Hare, J. Montgomery, Montgomery Hare, Meredith Hare & William H. Hare, Ttees. u/w Mary Meredith Hare	9	584
Griffith, Mary E.	3			
Griffith, Theo. W.	3			
Grimball, Charlotte M.	6			
Grinnell, Sarah J.	20			
Grinnen, Rose	1			
Guiteras, Gertrude E.	23	Haring, Bertha S.	4	
Guiteras, Ramon B.	22	Harkness, Chas. W.	150	
Gulick, Alexander R.	10	Harkness, Edw. S.	50	
Gulick, Est. Annie R.	100	Harris, Adelaide B.	25	
Gurney, Amelia F. D.	1	Harris, Winthrop & Co.	25	
Guthrie, Sarah H. W.	8	Harrower, Caroline Ives	8	
Hagaman, Mary A.	4	Hartshorn, Robert	34	
Hageman, Mary D.	20	Hasbrouck, Jacob D.	35	
Hager, Wilfrid M.	28	Hatch, Altha E.	15	
Haight, Charles C.	5	Hathaway, Claudia C.	19	
Haight, Garrett B.	5	Hauser, M. H.	2	585
Hale, Mary J.	32	Hawes, Annie Stephens	20	
Hall, Est. Edw. H.	5	Hawley, Sarah A.	5	
Hall, Mary B.	4	Hayes, Est. Caroline D.	25	
Hall, Sarah C.	38	Hazard, Archibald M.	17	
Halsey, Caroline B.	3	Hazen, M. Bell	163	
Halsey, Cornelia U.	25	Helm, Emily M.	2	
Halsted, E. P.	3	Hemenway, Augustus	81	
Hamilton, Wm. Pierson	3	Hencken, Hancke	50	
Hammer, Elizabeth R.	6	Hendrick, Olive A.	7	
Hancy, Edward J.	25	Hendrick, S. Elizabeth	7	

586	Henry, Catherine E.	81	Holden, E. R.	500
	Henry, Helen G.	100	Holmes, Emily L.	15
	Herrick, Sarah Reed	1	Holmes, Marion Fisher	25
	Herriman, Helen	150	Holton, Jane L.	27
	Herriman, W. H.	400	Homans & Co.	20
	Herron, Jane Espy	10	Homer, Annie B.	10
	Hewitt, A. E.	100	Homer, Robert H.	9
	Hewitt, Amanda E.	25	Hope, Florence T.	7
	Heyl, Julia S.	40	Hopkins, Charles V.	1
	Hicks, Frederick C.	15	Hopkins, Ferdinand T.	75
	Higgins, Eugene	3,188	Horton & Co., H. L.	13
	Hill, Charles H.	3	Hotchkiss, Dora A.	10
	Hilldebrandt, Henrietta R.	5	Hotchkiss, Henry L.	70
587	Hillebrandt, Marie L.	5	Hotchkiss, Marie Oakes, Ttee. u/w Mary A. F. Hotchkiss	50
	Hillebrandt, Walter L.	5		
	Hillman, Edward D.	1	Hotchkiss, Susan V.	120
	Hillman, R. R.	2	Houghton, James W.	25
	Hillyer, Appleton R.	13	Howe, Elizabeth B. R.	5
	Hinman, Belle Beard	50	Howell, I. V.	4
	Hiss, Caroline D.	50	Howell, John T.	3
	Hitchcock, Francis R.	100	Howell, Josiah A.	4
	Hitchcock, Thomas	100	Howell, William E.	3
	Hoag, Elizabeth F.	50	Howland Agnes	5
	Hoagland, Raymond	275	Howland Blanche	8
	Hoe, Olivia P.	62	Howland, Est. Cornelia S.	49
	Hoffecker, A. Frank	3		
588	Hoffman, Albert L.	5	Howland, Edith	5
	Hoffman, Francis B.	5	Howland, Emily	25
	Hoffman, Jr., F. Burrall	5	Howland, Slocum	7
	Hoffman, Murray	5	Howland, Est. Wm.	25
	Hoffman, William Wickam	5	Howlett, Nattie S.	3
	Holbrook, Grace M.	13	Hoy, Florence	5
	Holcomb, Clara C. & Geo. H. Pettit, Ttees. for Sarah Amelia White, u/w Marion F. Steers	2	Hoyt, J. R.	1
			Hubbard, Elizabeth L.	1
			Hubbard, Kate L.	13
			Hubbard, Maude	1
	Holcomb, Henry V.	2	Hubbard, Thomas H. &	

Robert D. Weston, Excrs. of the will of Florence DeW. Sampson	100	Jackson, Mary Van Nest	325	589
Hubbell, Emily A.	2	Jacobs, Margaret A.	2	
Hubbell, James P.	7	Jacobus, Clara C.	38	
Humphrey, Emily A.	5	James, J. Arthur	125	
Humphreys, Lydia B.	6	Jayne, Charles E.	5	
Hunker, Jacob J.	5	Jeanes, Edward K.	40	
Hunnewell, Est. H. H.	50	Jeanes, Isaac W.	15	
Hunt, E. D.	250	Jefferys, Emma A.	5	
Hunt, Margarita Cress	3	Jenkins, Laura	17	
Hunt, Est. Nathaniel W.	75	Jenkins, M. C.	16	
Hunter, Anna F.	17	Jenkins, Wm. B.	47	
Hurd, Est. Emily Elizabeth	10	Jenney, W. S.	100	
Hurlbut, Elisha D.	5	Jennings, Chas. B.	28	590
Hurlbut, T. D.	36	Jennings, Elizabeth A.	7	
Hussey, Elizabeth R.	5	Jesup, Maria DeWitt	375	
Hutchins, Mary F.	5	Jewett, Geo. L.	25	
Hyde, Est. Elizabeth W.	50	Johnes, Mary B.	5	
Industrial Trust Co.	125	Johnson, Florence F.	25	
Ingalls, Sallie A.	8	Johnson, Isabel G.	19	
Ingalls, W. B. B.	3	Jones, Maude V.	1	
Inman, Frederick C.	61	Jones, S. R. D.	22	
Iselin, Caroline L.	13	Jones, Wm. L.	1	
Isham, Charles	10	Jonbert, Isabella M.	4	
Isham, Joanna A.	16	Jube, Albert B.	50	
Isham, Samuel	10	Judson, Chas. B.	32	
Isham, Wm. B.	10	Judson, Mary Mack	3	591
Ivory & Sime	60	Judson, Mary Mack, Exec. Est. J. Lee Judson.	9	
Jackson, Alma De F. C.	10	Karsner, Caroline M. J.	40	
Jackson, Esther L.	5	Kase, Charles M.	25	
Jackson, Joseph C.	9	Kayser, Julius	150	
Jackson, Jr., Joseph C.	8	Keck, Margaret W.	25	
Jackson, Katharine P. D.	7	Keck, Thomas A.	25	
		Keck, Walter M.	25	
		Keeck, Loew & Co.,	151	

592	Keene Nat. Bank of Keene, N. H.,	150
	Keep, Ralph S.	13
	Keep, Wallace I.	13
	Kelchner, Helen V.	13
	Kellogg, Mary L.	20
	Kemmerer, Mahlon S.	7
	Kennaday, Paul	50
	Kennedy, Mary L.	75
	Kerr, John Ernest	25
	Kerr, Nora Margaret	25
	Kidd, Adeline Pumpelly	60
593	Kidder, Peabody & Co.,	125
	Kilburn, Chas. F.	6
	Kilburn, Clara C.	6
	Kilburn, Margaretta D.	6
	Kilburn, Mary E.	6
	Kimball, Eleanor A.	5
	Kimber, Mary	5
	Kinney, William B.	152
	Kinsey, Frances T.	1
	Kinsey, Mary M.	1
	Kissam, Wm. Adams	150
	Klee, Rudolph	13
	Knapp, H. K.	150
594	Knapp, Margaret I.	50
	Knickerbacker, Helen L.	40
	Knowlton, Anne G.	3
	Knowlton, Junius C.	13
	Knowlton, Eben J.	300
	Krumbharr, Est. S. M.	1
	Kuykendall, Louise P.	3
	Lahey, Lyda E. B.	10
	Laidlaw, Elizabeth Clark	13
	Land Title & Trust Co., Trustee V. B. Padelford,	3
	Laning, R. H., Ttee. A. B. Humphrey & Heirs Elliott Estate,	10
	Laning, Mary M.	5
	Lansing, Susan N.	1
	Lapham, Cyrus E.	3
	Larned, Emma S.	19
	Lasher, Alfred P.	25
	Lathrop, Isabel Stevens	9
	Lawrence, Anna M.	1
	Leake, Caroline R.	20
	Leake, Charles R.	20
	Leake, Henry S.	20
	Leake, Richard B.	5
	Learned, Katharine D. W.	4
	Leavenworth, Susie E.	3
	Leavitt, Amelia W.	100
	Lederer, Lucye Pinchot	13
	Ledoux, A. R.	13
	Lee, Anna E.	4
	Lee, Mary S.	25
	Lee, Higginson & Co.,	100
	Leisenring, Est. Mary A.	5
	Lemierre, Jeanna R.	13
	Leopold & Co., James M.	163
	Le Seuer, Arthur	3
	Levy, Edward S.	9
	Levy, Leo	25
	Lewis, Frederic E.	1,004
	Lewis, Percy P.	1,004
	Life, Est. William	25

Lindley, Charlotte Le-Roy	25	
Lipper & Co., Arthur	7	
Litchfield, Geo. A.	22	
Litchfield, Grace D.	13	
Livermore, Josephine W.	275	
Lochner, G. Emory	4	
Lochner, J. Edward	4	
Lochner, Jr., Jacob L.	4	
Locke, Geo. L.	3	
Lockwood, Carrie A.	7	
Lockwood, Emma	2	
Lockwood, Fred'k A.	2	
Lockwood, Julia B.	7	
Lockwood, Manice de F.	24	
Lockwood, Thomas W.	5	
Lockwood, William B. E.	5	
Lodewick, Mary E.	10	
Loney, Catherine Wolfe	25	
Look, David M.	1,000	
Loomis, E. E.	325	
Loring, Geo. H.	15	
Lovatt, Fred. J.	1,000	
Loveland, Charles N.	20	
Loveland, Est. George	92	
Loveland, Josephine N.	32	
Loveland, Est. William	9	
Ludlow, H. S.	88	
Lung, H. Van C.	6	
Luscomb, Martin	10	
Lyle, Herbert C.	6	
Lyle, Louisa T.	3	
Lynch, Rachel A.	340	
McBee, Louise Post	13	
McClintock, Andrew H.	88	
McCorkle, John A.	23	595
McCormick, Mary Boyd	38	
McCrillis, John	3	
McCrum, Leslie M.	100	
McCully, Francis K.	50	
McCurdy, Caroline G.	2	
McCurdy, Henderson & Co.	15	
MacDougall, M. G.	62	
McEathron, G. W.	50	
McGregor, Austen H.	5	
McHatton, Eliza H.	2	
McKeever, Marie V. B.	12	
McLaughlin, Chester B.	125	596
McLean, Harriet Maynard	10	
MacMartin, Malcolm	10	
MacQuoid & Co., C. W.	10	
McMurtry, Letitia	20	
Mabon & Co.	7	
Mabbatt, Josephine H.	5	
Mackay, Helen G.	62	
Mackie, David Ives	1	
Magee, Emma S.	34	
Magee, Jr., Geo. J.	19	
Magee, John	100	
Mahany, David	400	
Mahany, Ellen Annie	150	597
Mairs, Wm. H.	300	
Makepeace, Lucetta B.	4	
Malcom, Marguerite	1	
Mallery, Jeannie T.	25	
Manchester, Abraham	5	
Manning, John B.	562	
Manning, Jos. J.	100	
Markham, Laura S.	7	
Marlatte, Jennie	18	
Marling, Chas. E.	108	

598 Marsh, Daniel F. 3
Martin, Louise R. 19
Martin, Serena A. 3
Marvin, Dwight E. 17
Marvin, Elizabeth V. N. 37
Marvin, Frederic R. 17
Mason, Henry Edgar 38
Mason, Martha R. F. 35
Mason, Wallace L. 1
Matthews, Anna M. 5
Matthews, Charles 125
Matthews, K. P., in trust for Edward N.
599 Matthews 1
Mattison, Ellen D. 9
Maund, Elizabeth A. 12
Maund, Margaret E. 14
Maury & Auchincloss 25
Maury, Kate Carroll 4
Maxwell, Clifford L. 2
Maxwell, Henry L. 340
Maxwell, Howard W. 332
Maxwell, Howard W., John R. Jr., Henry L., Ttees. u/w J. Rogers Maxwell for Lou-
ise Maxwell Whitney 166
600 Maxwell, John R., Jr. 332
Maxwell, Maria L. 664
Maxwell, Lydia Clothier 27
Maxwell, Mary A. 19
Mayer, Alfred G. 1
Maynard, Samuel R. 50
Meeks, Caroline C. 3
Mehaffey, Geo. W. 3
Mehaffey, William A. 3
Memory, S. G. 50
Meredith & Co., William T. 39
Meserole, Cornelia P. 94
Metcalf, Mabel W. 3
Metropolitan Museum of Art 263
Mettler, Geo. N. 10
Meyer, Chas. F., F. H. Baugh & Wm. C. Schmeisser, Ttees. u/w Nanny Gail Meyer for Charles F. Meyer 1
Meyer, Chas. F., for Ttees. u/w Nanny Gail Meyer for Ella F. Meyer 1
Meyer, Jr., Henry C. 5
Meyer, Leopold 50
Meyers, Alice G. 5
Millard, Alice D. 8
Miller, Jr., Geo. A., Jas. H. Wainwright & J. Vimont Lyle, Exers. Est. Geo. A. Miller 3
Miller, Howard E. 6
Miller, J. Wesley 7
Miller, Louesa A. 6
Miller, Est. M. Louisa 62
Miller, Mary W. 13
Miller, Seward A. 6
Mills, John K. 11
Mills, Priscilla 1
Miners Savings Bank, Wilkes-Barre, Ttee, Est. S. H. Woodbury 20
Miniere, Jules 17
Minor, Lottie S. 7

Mitchell, Clarence B. as sole Ttee. u/w John I. Blair	40	Murray, Frank W.	4
Mitchell, Cora Reed	1	Murray, Geo. W.	4
Mitchell, Grove P.	13	Murray, James Burch	13
Mitchell, Lillian T.	275	Murray, Libbie McClure, Excx., Hiram McClure Estate	4
Mittendorf, Ellen M.	400	Murray, Russell	4
Mixter, Wm. G.	20	Mutch, J. Irwin	4
Moore, Ada Small	250	Mutual Life Ins. Co. of N. Y.	1,500
Moore, Grace Perkins	4	Myers, Marcus A.	300
Moore, James Hobart	550	Nash, James R.	13
Moore, William H.	1,675	Nelson, Helen D.	7
Morgan, Livermore & Co.	236	Nesmith, Mary	1
Morris, Lucy A.	75	Newbury, Est. Geo. G.	10
Morrison, L. W.	13	Newhall, Horatio	5
Morss, Emily G.	1	New Hampshire Savings Bank	50
Morton, Mary E.	40	Newport Trust Co., Ttee. under 5th clause of will of Frances M. Hoyt.	25
Morseley & Co., F. S.	100	New York Life Ins. & Trust Co., Ttee. for Juliette T. Benedict	25
Mosle, Katharine H.	20	New York Life Ins. & Trust Co., Ttee. for Helen C. Bostwick	34
Moss, Grace A. Bulkley	38	New York Life Ins. & Trust Co., Ttee. for Sarah J. Chambers	27
Mott, Emma A.	10	New York Life Ins. & Trust Co., Ttee. for Anton A. Raven	50
Mott, George S.	6	New York Life Ins. & Trust Co., Ttee. for Carolyn E. Prentice	25
Mott, Joseph A.	7		
Mott, Percy S.	8		
Moulton, Catherine T.	1,004		
Mourraille, Elsie M.	4		
Mulford, L. J.	10		
Mulford, Madeleine D.	10		
Muller, Elizabeth W.	21		
Muller, Margaret L.	21		
Mumford, T. J.	2,200		
Murray, Jr., A. S.	4		
Murray, Jr., A. S. Ttee. u/w Ellen Murray Beam, de.	5		

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604	New York Life Ins. & Trust Co., Ttee. for u/w Mary T. Sands	25
	New York Life Ins. & Trust Co., Ttee. for Emma C. Tweddell	60
	New York Society for Relief of Ruptured and Crippled	75
	Nisbet, Theodore B.	2
	Nisbet, William B.	3
	Norrie, Eloise L. Breese	100
	North, Est. Edward	8
605	Nottingham, Eloise	63
	Nourse, Julia L.	30
	Oakes, Mary J.	5
	Olmstead, W. D.	25
	Osborn, Nancie C.	10
	Ostheimer, Blanche, Ttee. u/w Anthony Pollok	77
	Ostheimer, Robert G.	15
	Otis, John C.	7
	Owens, J. J. A.	50
	Paine, John W.	100
	Paine, Martha L. G.	25
606	Palmer, Anna S.	50
	Palmer, Julius	25
	Palmer, Laura A.	150
	Palmer & Co.	150
	Palmer, N. F. & A. R. McCanless, Ttees. Florence E. McGreggor	50
	Palmer, N. F. & A. R. McCanless, Ttees. for Geo. W. Quintard	50
	Palmer, N. F. & A. R. McCanless, Ttees. for H. B. Quintard	50
	Palmer, N. F. & A. R. McCanless, Ttees. for Frances A. Safford	50
	Palmer, N. F. & A. R. McCanless, Ttees. for Geo. W. Quintard, 3rd.	19
	Palmer, Stephen S.	53
	Papineau, Est. M. E. W.	30
	Paraf, Eugenie, Ttee. u/w Anthony Pollok	46
	Parrott, Helen L.	7
	Parsons, Francis	20
	Parsons, Wm. Decatur	13
	Paterson Safe Deposit & Trust Company	100
	Patrick, Annie V.	2
	Patrick, Cornelia V.	2
	Patten, F. F.	13
	Patterson, Grace H. L.	29
	Paxson, Elliott D.	5
	Payne, W. G.	100
	Peabody, Philip G.	1
	Peck, Arthur N.	50
	Peck, Edward E.	4
	Peck, Mary	5
	Pell & Co., S. H. P.	4
	Pelton, Henry V.	28
	Peltz, Wm. Law Learned	4
	Penfold, Wm. Hall	50

Penna. Co. for Insurances on Lives and Granting Annuities and Wm. L. Brown, Ttees. for Anna T. Brush u/w Chauncey H. Brush, de. 31

Penna. Co. for Insurances on Lives and Granting Annuities and Wm. L. Brown, Ttees. for Clarence H. Brush u/w Chauncey H. Brush, de. 32

Penniman, Louise D. 10

Perkins, Mabel H. 5

Perkins, Mary R. 6

Perry, Virginia B. 250

Peters, Joanna 4

Phillips, Evangeline 15

Phillips, Harriet H. 13

Phipard, C. K. 10

Phipard, Leonora L. 11

Phoenix, Phillips & Lloyd Phoenix, as the only act'g Ttees. u/w S. W. Phoenix 52

Pierson, Edward F. 7

Pierson, J. Fred. 7

Pinney, Maria W. 15

Pinney, Royal W. 55

Pistor, Annette 5

Pitkin, Wolcott H. 25

Platt, Harriet W. 125

Plaut, Solomon 50

Plum, Mercy M. 13

Plum, Est. S. H. 63

Poillon, Adeline L. 19 607

Polhemus, R. Augusta 153

Polk, Isabella G. 12

Pollard, Est. Wm. P. 5

Pomroy Bros., 13

Popham, H. M., as Substituted Ttee. for K. T. Popham, 13

Porter, David C. 10

Porter, Mary V. D. 9

Porter, Mary V. D., Ttee. for Eliza M. & J. M. Porter, 25

Potter, Helen M. 25 608

Potter, Josephine E. 5

Potts, Ida C. 25

Powe, Josephine E. 4

Power, Nicholas 5

Pratt, Harriet 3

Pratt, Isabel Gentle 3

Pratt & Co., Chas. 100

Price, Eli Kirk, Ttee. for Edward M. Paddelford, 4

Prince, Henry Starr 1

Prince, J. Lloyd, 1

Prior, Chas. Edw. 5 609

Proctor, Maria W. W. 39

Proctor, Rachel M. W. 25

Prosser & Son, Thomas 10

Providence Mutual Fire Ins. Co., 50

The Provident Life & Trust Co., of Phila., Ttee. for Annie Carter u/w Sarah E. Meredith, 4

610 The Provident Life & Trust Co., of Phila., Ttee. for Margaret M. Menzl, u/w Sarah E. Meredith, 4
The Provident Life & Trust Co., of Phila., Ttee. for Emily Meredith u/w Sarah E. Meredith, 7
Pryor, Flora C. 19
Pulitzer, Est. Joseph 1,250
Pullar, R. J. 5
611 Purdy, Elbert C. 6
Purdy, Frederic A. 6
Purdy, Irving E. 6
Purdy, Est. John C. 1
Putnam, Emma E. 3
Pyne, Margaretta S. 25
Pyne, Maud Howland 1,250
Pyne, Moses Taylor 3,566
Pyne, M. T. & S. S. Palmer, Ttees. for Kate W. Winthrop, 2,200
Pyne, M. T. & S. S. Palmer, Ttees. for
612 Geo. C. Taylor, 550
Pyne, M. T. & S. S. Palmer, Ttees. for Henry A. C. Taylor, 2,200
Pyne, Percy R. 50
Pyne, 2nd, Percy R. 50
Quintard, Geo. W. 325
Quintard, Maice W. 17
Rafel, Sara 1
Ralston, Margaret C. 12
Randolph, E. & C. 75
Rankin, Mary Langdon, 15
Raven, Anton A. 125
Raymond, Dudley E. 1
Raymond, Ely 1
Raymond, Maude S. 13
Rea, Bessie W. Bailey, 55
Read, E. H. 50
The Real Estate Title Ins. & Trust Co., Phila., & S. Eugene Kuen, Ttees. under deed of trust from H. Frances Miller, dated July 26th, 1910 13
Reed, Anna 1
Reed, Annie H. 2
Reed, Julia 1
Reed, Louis F. 5
Reeder, Sarah Cook 62
Reeve, Mary S. 3
Revere, Est. Augustus L. 13
Reynolds, Annie 5
Reynolds, J. E. 50
Rhinelander, Helen M. 3
Rhode Island Hospital Trust Co., Ttee. under deed of Harriet T. Forrest, dated April 24th, 1911, 2
Rhode Island Hospital Trust Co., Ttee. u/w W. H. Chandler, 16
Rhode Island Hospital Trust Co., Ttee. u/w Henry Pearce, 11
Rhodes, Mary T. 13
Richards, Edgar 5
Richards, Gracie K. 4

Richardson, Stella	4	Rowland, Sam'l & Amory E. Rowland, Ttees. for R. T. Forbes	25	613
Richelot, Alice Ttee. u/w Anthony Pollok,	54	Rowland, Jr., Thos. F.	10	
Richelot, Germaine	13	Rowland, Est. Wm.	50	
Richmond, Est. Henry	24	Russell, Albertina T.	25	
Righter, Emma A.	10	Russell, Archibald D.	26	
Rikert, Birdella V. R.	10	Russell, D. E.	125	
Robbins, Chandler	106	Russell, Eugenia R.	4	
Robbins, Harriet L.	25	Rutherford, Henry	200	
Roberts, Geo.	8	Ruthrauff, E. M. W.	2	
Roberts, Henry	6	Rutter, N. Natalie	2	
Roberts, Marshall O.	133	Ryle, Julia	25	
Roberts, Mary M.	133	Sage, Clarissa I.	23	614
Robinson, E. H. J.	4	St. James Protestant Episcopal Church, N. Y., Rectors, Wardens & Vestrymen of	25	
Rockefeller, Jr., John D.	25	St. Paul's Church Home for Aged Women, The Fund of	9	
Rockefeller, William	250	Sampson, Lena Edge	11	
Rodman, Nannie V. N.	63	Snadford, Joseph W.	3	
Rogers, Archibald	25	Sands, Jr., Daniel C.	25	
Rogers, Chas. B. & Pascal C. J. DeAngelis, Ttees. u/w Elizabeth B. Rogers,	50	Sanford, Anna F.	25	
Rogers, Emily E.	3	Sanford, Stephen	898	
Rogers, Geo. T.	100	Sanger, Ethel	25	615
Rokenbaugh, Henry S.	50	Savings Bank of Walpole	50	
Ronalds, P. Lorillard	50	Sawtell, Celestia M.	15	
Roome, Claudius M.	13	Schaepkens Van Riempst, Jessie	3	
Roome, Sadie M.	3	Scheftel, Est. Adolph	50	
Rospigliosi, Ethel	5	Schermerhorn, F. A.	20	
Ross, Maria L.	2	Schmeisser, Louise	2	
Rossman, Florence H.	3	Schmelzel, Jane E.	43	
Rowland, Chas. B.	18	Schoenbrun, Alfred	3	
Rowland, Florence Q.	17			
Rowland, Jeanie Barton	8			
Rowland, Lide E.	13			

616	Schoenbrun, Sigmund	3
	Scott, Edith W.	3
	Scott, Emma W.	10
	Scott, Harriet S.	5
	Scott, Mary C.	27
	Scranton Trust Co., Gdn. Eugene Shoemaker La Bar	25
	Scribner, Arthur H.	58
	Scribner, Charles	10
	Scribner, Charles & Arthur H. Scribner, Ttees. of Trust created by will of John I. Blair for I. S. Fitz Hugh	
617		40
	Scribner, Charles & Arthur H. Scribner, Ttees., etc., for Emma S. Larned	16
	Scribner, Charles & Arthur H. Scribner, Ttees. for Chas. Scribner	40
	Scribner, Charles & Arthur H. Scribner, Ttees. etc., for Arthur H. Scribner	16
618		
	Sears, Herbert M.	23
	Sears, Mary C.	15
	Sears, Philip S.	23
	Sears, Richard D.	23
	Security Trust & Safe Deposit Co., Ttee. Susan L. Foulke	13
	Seeberger, Louis	3
	Seeley, F. E.	2
	Seeley, F. S.	2
	Seeley, H. S.	2
	Seeley, Robert C.	2
	Seeley, W. E.	2
	Seibert, Mary H. R.	2
	Seymour, Caroline A.	5
	Seymour, Charlotte S.	5
	Seymour, Julia D.	23
	Seymour, Louisa	13
	Seymour, Mary H.	14
	Seymour, Mary H., Ttee. for Edw. S. Seymour	13
	Seymour, Mary H., Samuel R. Rainey & Seth C. McArthur, Ttees. for Edw. S. Seymour	6
	Shattuck, Albert R.	25
	Shaw, Francis & Francis C. Welch, Ttees. u/w G. H. Shaw	25
	Shaw, M. Louise	22
	Shepherd, Annie A. (Miss)	9
	Sherwood, Frances T.	20
	Shipman, Geo. M.	5
	Shipman, Henry R.	11
	Shoemaker, Ella deP.	6
	Shoemaker, Mary	25
	Shults, Daisy Beard	50
	Sibley, Harriet J.	13
	Simonds, Est. M. Charlotte	1
	Simpson, Marie L.	1
	Simpson, Martha A.	5
	Skewis, Emma J.	3
	Skidmore, Samuel T.	25

Slater, John R.	3	Sparrow, Edward W.	50	619
Slator, Hannah	12	Spencer, Jane P.	3	
Sloan, Helen R.	1	Spencer, Est. Mary B.	25	
Sloan, Julia R.	29	Spencer, Mary T.	55	
Sloan, Katherine C.	7	Spratt, Thomas	38	
Sloan, 2nd, Margaret E.	1	Squire, Emily A.	5	
Sloan, Mary A.	5	Squire, Ernest B.	5	
Sloan, Est. Samuel	527	Stafford, DeWitt	44	
Sloan, Samuel	25	Stanley, Florence H.	19	
Sloan, 3rd, Samuel	1	Stanley, Helen Talcott	7	
Sloan, William S.	1	Steele, Harriet K.	63	
Smith, Burnett	15	Sterling, John W.	325	
Smith, C. A. H.	13	Sterling, Samuel B.	5	
Smith, De Cost	15	Stern, Benjamin	50	620
Smith, Edward R.	5	Stevens, Elizabeth M.	25	
Smith, Frances	6	Stevens, Lucille M.	25	
Smith, Frances L.	7	Stewart, Charlotte M.	50	
Smith, Frank H.	10	Stickle, Est. Byron K. de	35	
Smith, Est. Grace S.	8	Stickle, George W.	35	
Smith, H. A.	25	Stiger, Wm. D.	12	
Smith, H. V. D.	3	Stillman, Jas.	200	
Smith, Joseph Reuel	25	Stillman, James A.	100	
Smith, Julia A.	25	Stimson, Daniel M.	13	
Smith, Leslie	15	Stoeckel, Ellen B.	145	
Smith, Mary H.	5	Stone, Albert	13	
Smith, Est. Pamelia A. Myrick	7	Stone, Annie	22	621
Smith, Philip L.	5	Stone, Ellen J.	22	
Smith, Sedgwick	15	Stone, Harriet D.	4	
Smock, Catherine E. B.	13	Storer, Albert H.	52	
Sneden, John M.	25	Storer, Est. Augusta B.	8	
Snyder, Ellison V. L.	17	Storey, Thorndike, Palmer & Thayer,	7	
Snyder, Robert Wodrow	17	Storrs, Arthur H.	3	
Society for the Relief of Respectable Aged Women	5	Storrs, W. H.	5	
		Stout & Co.,	20	
		Strange, Elizabeth Ryle	25	

622	Strasburger, Bertha, Hannah & Lillian	3
	Strehl, Wm. R.	2
	Strong, Est. Harriet Lydia	3
	Studt, L. Sylvie	4
	Sturtevant, Charles C.	11
	Sturtevant, Clara F.	2
	Sturtevant, Clifford L.	10
	Stuyvesant, A. V. H.	50
	Sutro Bros. & Co.,	75
	Sutphen, Harriet C. (Miss)	10
623	Sutton, Alice H.	5
	Sutton, James	43
	Swan, Chas. H.	5
	Swan, Est. Cyrus	3
	Swan, Elizabeth M.	12
	Swan, Marie H.	3
	Swift, Irene B.	21
	Swords, Julia B.	2
	Swords, Maud S.	2
	Swords, Maud S., Gdn. of Chas. R. Swords,	1
	Swords, Robert S.	1
	Swortfiguer, Henry	
624	Bragdon	50
	Tailer, Edward L.	6
	Tailer, Edward N.	10
	Tailer, Henry P.	6
	Tailer, James B.	7
	Tailer & Robinson,	25
	Tainton, Charles M.	91
	Tait, Est. John J.	10
	Talbot, Isaac T.	2
	Talcott, Fannie H.	10
	Talcott, George S.	8
	Talcott, James	100
	Talcott Bros.,	25
	Talmage, John F.	1,800
	Talmage, Est. Thos. Hunt	250
	Tanenbaum, Moses	10
	Tarrytown Historical Society,	8
	Taylor, Est. Emile G.	15
	Taylor, Emma F.	16
	Taylor, Gertrude Murray	4
	Taylor, H. A.	100
	Taylor, Henry A. C.	640
	Taylor, Henry R.	13
	Taylor, Est. John J.	10
	Taylor, Julia Isham	10
	Taylor, Mary L.	15
	Taylor, May G.	18
	Taylor, Robert J.	15
	Taylor, Auchincloss & Joost,	20
	Tenney, Dudley	10
	Terhune, Nicholas	50
	Terrill, Est. Mary A.	15
	Thayer, Gladys B.	275
	Thebaud, Louis A.	50
	Thomas, Augustus	23
	Thomas, C. K.	2
	Thomas, Clara H.	15
	Thomas, Cornelia K.	15
	Thomas, Emma L.	1
	Thomas, S. D.	2
	Thompson, Andrew	13
	Thompson, Ferris S.	550
	Thompson, May B.	39
	Thomson, Sophia T.	10
	Thorburn, Annie	25
	Tidswell, Robert Ingham	25

Tillinghast, Albert H. & The Rhode Island Hospital Trust Co., Ttees. for Rosa Anne Grosvenor,	125	
Tillman, Elizabeth	20	
Timmermann, H. G.	200	
Timmermann, Kate F.	100	
Tinker, Edith	12	
Tinker, Henry C.	250	
Titcomb, Chas. C.	1	
Titus, Arthur N.	13	
Titus, Eunice J.	50	
Tobias, Florian	3	
Tower, Joseph T.	275	
Tower, Maria B.	40	
Towle, Alice	5	
Towle, Carrie A.	6	
Town, J. J.	50	
Townsend, Phebe Anna	15	
Townsend, Est. Silvanus S.	25	
Townshend, Mary H.	37	
Trask, Julia H.	59	
Traveler's Ins. Co.,	125	
Traver, Amelia K.	3	
Treadway, Annie W.	50	
Treadwell, John P.	2	
Treadwell, Mary Elizabeth	2	
Treilhard, Sarah A.	28	
Trimble, Marjorie S.	6	
Trowbridge, Jr., Caroline H.	3	
Trowbridge, Ttees. Dorothy Quincy u/w E. Hayes Trowbridge	134	
Trowbridge, Hayes Quincy	34	625
Trowbridge, Sarah C., T. R., E. H. & H. L. Hotchkiss, Ttees. Est. H. Trowbridge.	63	
Trowbridge, Sophia P. T.	6	
Trowbridge, W. J., F. D. & E. P., Ttees. Est. W. J. Trowbridge.	39	
Trowbridge, W. J., F. D., & H. Q., Ttees, Est. E. H. Trowbridge	13	626
Trowbridge, W. R. H.	3	
Truesdale, W. H.	50	
Tubbs, Henry S., de.	2	
Turnure, Geo. E.	9	
Turnure, Geo. E., Executor & Ttee. Mary T. Cameron	9	
Turnure & Co., Lawrence	9	
Turnure, Mary E.	1	
Turnure, Mary S.	75	627
Turnure, Percy R.	56	
Tuttle, Jason H.	150	
Tweddell, Emma C.	41	
Twombly, Florence A. V.	1,000	
Tysen, Eliza L. D.	18	
Underhill, Phebe A.	2	
Union Trust Co., N. Y., Ttee u/w D. M. P. Read for John Meredith Read *et al.*	5	

628 Union Trust Co., N. Y., Ttee. for Comtesse Marie Max de Foras *et al.* 5
Union Trust Co., N. Y., Ttee. for Emily M. R. Spencer *et al.* 4
Union Trust Co., N. Y., Ttee. for Harmon Pumpelly Read *et al.* 5
Union Trust Co., N. Y., Ttee. u/w William Whitewright for S.
629 W. Duncan 140
Union Trust Co., N. Y., Ttee. u/w William Whitewright for Stuart Duncan *et al.* 40
Union Trust Co., N. Y., Ttee. u/w William Whitewright for Susan S. Duncan *et al.* 20
Union Trust Co., N. Y., Ttee. u/w William Whitewright for Amy Lea Duncan *et al.* 20
630 Union Trust Co., N. Y., Ttee. u/w William Whitewright for Jeanie B. Duncan *et al.* 20
Union Trust Co., N. Y., Ttee. u/w William Whitewright for Elizabeth W. Dunscomb *et al.* 20
Union Trust Co., N. Y., Ttee. u/w William Whitewright for Annie Stuart Leeds 40
Union Trust Co., N. Y., Ttee for Wm. Whitewright Stuart *et al.* 40
Union Trust Co., N. Y., Ttee for Annie Duncan Watson *et al.* 60
Union Trust Co., N. Y., as Ttee. under 14th paragraph of will of Sebastian D. Lawrence 87
The Union & New Haven Trust Co., Ttee. u/w Nathan S. Bronson, for Sarah S. Bronson 95
The Union & New Haven Trust Co., Ttee. for Theodore L. Bronson 25
United States Trust Co., Ttee. u/w Watson E. Case 100
United States Trust Co., as Ttee. under 14th paragraph of will of Sebastian D. Lawrence 88
United States Trust Co., as Ttee u/w Anna L. Plum 13
Vail, Eugene Lawrence 2
Vail, Frances H. 63
Vail, Jane E. 25
Vail, M. Gertrude M. 3
Vail, Phebe H. 25
Valentine, Eliza W. 100
Valentine, Samuel 100
Value, Charlotte W. 38

Van Brunt, Chas.	12	Voorhees, Jr., Margaretta Remsen	2	631
Vanderbilt, F. W.	1,500	Voorhees, Stephen Francis	2	
Vanderbilt, W. K.	9,000	Wagner, Bertha	25	
Vanderpool, Alice W.	30	Wagner, Dickerson & Co.	3	
Vanderpool, Est. Beach	25	Waite, Martha M.	20	
Vanderpool, Wynant	20	Wakeman, Ross W.	22	
Van Emburgh, & Atterbury	69	Walker & Sons, Joseph	3	
Van Loan, Anna F.	5	Waller, E. M.	13	
Van Nostrand, Louisa B.	126	Ward, Jr., Joseph	13	
Van Schoonhoven, Alida L.	50	Wardell, Chas. H.	5	
Van Steenbergh, W. H.	10	Wardman, George.	20	632
Van Vechten, Elizabeth	25	Wardell, Belle M.	19	
Van Volkenburgh, Est. M. P.	2	Wardwell, Harriet P.	19	
Van Wagenen, Emily D.	23	Wardwell, Mary A.	5	
Van Wagenen, Emily D. & Gertrude Dodd, Executrices of the last will and Test. of Elizabeth W. Tanner, de.	20	Wardwell, Sophia L.	24	
Van Zandt, Est. William	75	Ware, Richard	10	
Vaughan, Sarah	50	Waring, Vivienne R.	1	
Vermilye, Jennie T.	2	Warner, J. Foster	13	
Vernon, Sophia D.	15	Warner, William A.	13	
Vilas, Charles N.	75	Warner, C. & E.	200	
Von Hoffmann & Co., L.	50	Warren, Edmund Leon	1	
Von Post, H. C.	100	Warren, Josephine G.	5	
Von Post, Est. Jane S.	57	Waterbury, J. E.	75	
Von Storch, Serena	50	Watson, Emily S.	25	633
Voorhees, Margaretta R.	4	Wattles, W. Seward	10	
		Wayland, Martha W. R.	125	
		Webster, Hamilton F.	10	
		Webster, S. M. F.	5	
		Webster, S. M. F. & Hamilton Fish Webster as Excrs. under last will and testament of Sidney Webster	200	
		Weed, Alice P.	25	

634	Weed, Edward P.	1		Willets, Amelia	2
	Weed, Samuel L.	3		Willets, Anna W.	4
	Weed, Sophia A.	2		Willets, Est. James R.	25
	Weir, Est. Anna D.	7		Willets, John T.	4
	Weir, Ella Baker	7		Willets, Maria	39
	Welch, Thomas F.	2		Willets, Martha T.	5
	Wells, Caroline Thorn	10		Willets, S. Taber	2
	Wells, Mary T.	62		Williams, Abby L.	25
	Wetmore, Geo. Peabody	50		Williams, Alice Castree	18
	Whaley, Jr., Geo. H.	200		Williams, Fannie D. Sibley	3
	Wheeler, Henry L.	25		Williams, Howell L.	10
	Whitaker, Albert E.	18		Williams, Est. J. B.	55
	Whitaker, Alex. Ingham	18		Williams, John N.	7
635	Whitaker, Benj. Ingham	20		Williams, Judson	7
	Whitaker, Geo. Cecil	13		Williams, Mildred L.	9
	Whitaker, Hugh Sartorius	13		Williams, Est. Sarah	125
	Whitaker, John Arthur	18		Willis, Harriet T.	10
	Whitaker, Jos. Isaac Spadafora	18		Willis, Sarah L.	13
	Whitaker, Joshua	18		Willoughby, W. D.	5
	Whitaker, Robert Sanderson	18		Wilson, Caroline A.	50
	Whitaker, William I.	25		Wilson, C. Colket	12
	White, Alain C.	125		Wilson, Chas. H., Gdn. Alden Sampson, 2nd	89
	White, Est. Ella A.	2		Wilson, Julia S.	12
	White, May W.	100		Wilson, Mary H.	5
636	White, Sumner W.	2		Wilson, W. C.	12
	White, W. A. & A. W.	100		Winthrop & Co., Robert	40
	Whitin, Albert H.	125		Wisdom, John L.	1
	Whitman, Charlotte H.	52		Wolcott, Mary H.	12
	Whitney, Florence Dillon	2		Wolfe, Sarah C.	29
	Whitney, Louise Maxwell	166		Wolff, Charles E.	25
	Wilcox, Lillian M.	8		Women's Seamen's Friend Society, Conn.	9
	Wilder & Co., Enos	6		Wood, Arthur H.	1
	Willard, Anabel V. N.	63		Wood, Mary Anna	2
	Willard, John	9		Wood, Sarah	25
	Willet, Mary E.	10		Woodmansee, Bernis L.	475

Woodruff, Caroline T.	4	Wyeth, Fannie O.	10
Woodruff, Catherine S.	5	Young, Caroline E.	13
Woodruff, Ida E.	28	Young, Marie Hunt	100
Woodruff, Mary B.	17	Zabriskie, Andrew C.	250
Woodward, William	50	Zabriskie, Eliza B.	3
Work, Est. Frank	2,500	Zabriskie, Henry Lyles	16
Worthington, Est. John	8	Zabriskie, Jennie A.	3
W ight, Anna F.	75	Zabriskie, N. Lansing	3
Wright, Lucy M.	19	Zimmermann, John	200
Wyckoff, Clarence P.	5		
Wyckoff, Emma M.	19		131,814
Wyeth, Charlotte G.	38		

J. J. A. OWENS.

Petitioner's Exhibit P5.—October 7, 1913.—List of Stockholders, Delaware, Lackawanna & Western Railroad Co., Who Are Not Stockholders of the Delaware, Lack. & West. Coal Co.

Adams, Agnes (Miss)	7	Bache, J. S. & Co.,	170
Adams, Edward C.	200	Bailey, Harriet A.	250
Affleck, Est. James	23	Bainbridge, Lawrence M.	2
Affleck, James G. & Anna W. Peter as Trustees u/w Sarah Williams,	375	Baird, Alice M.—Lillian Benet, Imlay L. Benet, Ttees of Est. Ludovic Bennet,	76
Agnew, Mary H. dec.	230	Baker, Margaret E.	1
Alba, Eleanore C.	1	Balch, Adelaide M.	1
Alexander, Caroline B.	30	Ballantine, John H. dec.	1,380
Alexandre — Burnet,	709	Ballantine, Robert F. dec.	2,190
Anderson, Adelaide F.	20	Barbour & Co.,	12
Andrews, Harriet N. dec.	69	Barrett, John W.	54
Auchincloss, Maria S.	100		
Awde, Albert E.	10		

640	Bartram, Edwin T.	12		Blair, DeWitt C.	46
	Bartram, Joseph Percy & Mary B. Woodruff, Ttees. under Sec. 4 will Sarah J. Bartram for benefit of Mary B. Woodruff *et al.*	117		Blauvelt, Ernest E.	5
				Blauvelt, Wm. D.	806
				Bodine, Amanda D.	10
				Borton, Joshua E.	10
				Bostwick, Helen C.	230
				Brokaw, Isaac V.	1,400
	Bartram, T. Earle	11		Brown, Elon G. dec.	132
	Battell, R. & J. W. Stewart, Ttees. for Ellen B. Terry,	178		Brown, James Clifton (Col.)	286
	Baxter, Irving S.	2		Brown, John B.	4
	Bayer, Edwin S.	50		Brown, Leslie W.	50
641	Beadleston, Edith & Henry C. Ttees. for Henry C. Beadleston,	29		Buchanan, T. Drysdale	5
				Bull, Fanny E.	144
				Burns, Phebe E.	2
				Burrough, Margaret M. K.	116
	Beadleston, Edith & Henry C. Ttees. for Wm. L. Beadleston,	20		Burrows, Mary W.	104
				Butler, Arthur G.	32
				Butler, Gertrude M.	8
	Beadleston, Edith & Henry C. Ttees. for Randolph Beadleston,	20		Butler, Marianne E.	8
				Byrd, William, as sub. Ttee. under the will of Mary H. Maury,	16
	Beadleston, Edith & Henry C. Ttees. for C. Perry Beadleston,	20		Callender, F. Arthur	10
				Campbell, H. G. & C.,	2
642	Beadleston, Edith & Henry C. Ttees. for Alice Lee Beadleston,	15		Carlisle, Mellick & Co.,	51
				Cartwright, Rachel A. dec.	1,809
	Beekman, Cornelius C.	5		Castelli, Baroness Anna	400
	Beekman, Edgar	5		Castree, John W. & Emily D. Van Wagenan, Ttees. u/w Carrie R. Castree,	82
	Beekman, Josephine E.	5			
	Beers, Henry A.	9			
	Bell, Edward J.	2			
	Benham, F. N. Ttee. for F. & H. S. Burr, u/w Ephraim H. Burr dec.	164		Central Trust Co., Ttees. created by last will & testament E. S. Higgins, benefit Josephine Brooks,	2,875
	Bergen, Tunis G.	10			

Central Trust Co., as sub Ttee. of trust created by 8th clause will, etc., Emma L. Higgins, for Gladys B. Brooks,	1,265		Corinth, Albert R.	1	643
Central Trust Co. as sub. Ttee. of trust created by 7th clause for Josephine W. Livermore,	1,265		Cornell, Geo. F. dec.	460	
Central Trust Co. as sub. Ttee. of trust created by 6th clause for Reginald Brooks,	1,265		Corwith, Sarah H.	57	
Chafee, Mary D.	20		Crisfield, Laura Z.	26	
Chalmers, Eliza J.	10		Crosby, Henry Barrett	5	
Chambers, Luther H.	26		Curie, Charles	159	
Chas, Elizabeth	58		Curtis, Atherton	230	
Chauncey, Florence I.	50		Dalrymple, Alex. S.	16	
Cheney, John W.	30		Davis, Mary P. Ttee. Eliza M. & J. M. Porter,	115	
Childs, William H.	14		Dawson, Benj. F.	40	
Choate, Joseph H., Jr.,	100		Dawson, Julia Douglas	40	
Choate, Mabel	100		Day, R. L. & Co.	46	644
Clark, Edward	23		Decker, William F.	20	
Clark, F. & H.	200		Decoppet & Co.,	10	
Clark & Co., Henry I.	100		DeHaven & Townsend,	400	
Closson, Henry B.	15		DeLaGrange, Anita M.	13	
Clough, Harriet K.	12		D. L. & W. RR. Co.,	2,596	
Cohen, Isaac	20		DeMott, Sarah F.	60	
Colt, Saml. P.	100		DeWolf, Francis E.	130	
Conover, Elizabeth L.	5		DeWolf, Isabella C.	130	
Conover, John Howard	4		Demarest, William R.	5	
Converse, Edmund C.	230		Dickerman, Carolin I.	15	
Cook, Mary E. (Mrs.)	5		Dickerman, Elizabeth S.	10	
Cooley, Francis R.	173		Dickinson, Harriet M.	30	645
Cooper, Valerie Frankel	5		Dill, Mary Muir	56	
Corcoran, Henry	5		Dill, Washington, dec.	202	
			Ditmas, Margaret	23	
			Dominick & Dominick	2,100	
			Doubleday, Frances C.	2	
			Douglass, Mary S.	20	
			Drexel & Co.	100	
			Dunkels, Frances	287	
			Duryee, Elisabeth S.	9	
			Duryee, Jos. R. in trust Samuel S. Duryee	9	

646 Duryee, Margaret V. N. 29
Duryee, Maria L. 9
Dwight, Jane W. 11
Dyer, Marshall R. 115
Ellsworth, James W. & Co. 300
Elms & Sellon 1
Emmet, M. Louise 20
Emmons, K. P. 14
Englehart, Linnie M. 20
English, Sarah West 22
Erismann, Camille 5
Evans, Isabel B. 5
647 Everett, Dorothy B. 10
Falkner, Helen N. 5
Falk, Doris M. 20
Farmers Loan & Trust Co., sub. Ttee. of Burnett Y. Tiffany Trust 100
Fay, Mary K. 8
Fearon & Co., Charles 100
Ferriss, Stark B. 4
Fidelity Trust Co., Holstein DeHaven & Jos. C. Crawford, Ttees. u/w Winfield S. Wil-
648 son, dec. 200
FitzGerald, Elizabeth J. 5
FitzGerald, Mary C. 5
Foster, Girard—Thos. Thacher & Frederick deP. Foster, Ttees. u/w Mary Van Nest 1,200
Frank & Co., Charles A. 5
Fredenburg & Lounsbury 100
Friedman, Lewis 100
Friedman, Sol. 200
Fry, Arthur V. 21
Gail, Helen C. F. H. Baugh & William C. Schmeisser, Ttees. u/w Geo. William Gail 20
Gallatin, Albert 200
Gaston, May L. 5
Gilbert, Bertha H. 173
Gilbert, Margaret R. 6
Gildersleeve, Edwin C. 12
Gilman, William V. 10
Girard Life Ins. Annuity & Trust Co., Phila. Agt. for Willing Day Nursery 11
Goetchius, John M. 200
Goetchius, Sarah G. K. 40
Gorton, Caroline S. 92
Green, Wm. A. 7
Greene, Lelia S. 13
Guaranty Trust Co., N. Y. in trust for Helen G. Henry, etc. 141
Guaranty Trust Co. N. Y., in trust for Margaret G. Colgate 141
Guiteras, Ramon 95
Hadley, Aurelia R. 10
Hager, W. D., dec. 110
Haines, John P. 100
Halle & Stieglitz 200
Hammerstein Oscar Greely 180
Hammerstein, Reginald 180
Harbach, Charlotte P. 29
Hardy, Sylvia Fowler 40
Harper, Mary E. Mills 48
Harris, Mary S. 11
Harrison, Birge 4

Harting, Charles H.	200	Hopper, Irving D.	20	649
Hastings, Mary A. T.	6	Hopson, Edwin N.	52	
Haviland, Sara H.	2	Hornblower, Emily S.	22	
Hayden, Stone & Co.	400	Horton, Martha T.	10	
Hayes, Grace G.	5	Horton, Martha T. & Mary J. T. Pearce, Ttees. for David Floyd Jones Tait, u/w Mary J. Tait	6	
Hays, Arthur G.	1	Howard, Charles M.	14	
Hegeman, Benj. A., Jr., Ttee. under Agreement between Chas. Matthews Peter B. Matthews, Kate Greenough Hegeman & Benj. A. Hegeman, Jr., dated Mar. 30, 1910	500	Howell, Walter L.	20	
		Howland, Sarah C.	444	
		Hoyt, Gerald, L. & Philip A. Carroll, Ttees. for Baronne Anita Maria DeLaGrange	57	650
Hemenway, A. — M. Gray & J. C. Gray, Ttees. u/w A. Heminway	1,150	Hoyt, Gerald, L. & Philip A. Carroll, Ttees Comtesse Mary Louisa DeKergorlay	57	
Hendrickson, Henry	17	Hoyt, Gerald, L. & Philip A. Carroll, Ttees. Helen C. Robbins	57	
Hessberg, Felix	20	Hubbard, Chas. W.	30	
Hibbler, Elizabeth G.	10	Hubbard, Geraldine M.	3	
Higgins, John D.	25	Hubbard, Thos. H. & Robt. D. Weston, Ttees. u/w Florence deW. Sampson, for Lena Edge Sampson *et al.*	200	651
Higgins, Virginia K.	25			
Hillman, Arthur	6			
Hillman, Emily C.	7			
Hine, Mary I.	35			
Hinkley, Margaret G.	10			
Hirsch, Lilienthal & Co.	20	Hubbard, Chas. W., Ttee. for Mary Ware Sampson	100	
Hoag, Geo. A.	200			
Holden, Hendrick S.	288	Hunt, Nathaniel W. Est. the Brooklyn Trust Co., Ttee.	345	
Holden, Willis A.	288			
Holland, Sarah E. & Clifford L. Sturtevant, Ttees. u/w George B. Holland	4	Huntoon, Daniel T. V.	5	
Hollister, H. H., 2nd	20			
Holt, Lucius, Hudson	28			

652 Industrial Trust Co., as Ttee. for Isoline N. & Hattie B. Barns 50
Jackson, Helen B. 20
Jacobs, Elsie B. 10
James, Carlton 25
James, Frederick P. 10
Jenkins, Matthew C. 154
Jennings, Mary B. 100
Jewett, Anna L. 58
Johnston, Belle I. 4
Joseph, Fannie S., dec. 100
Kahn, Emil W. 1
653 Keane, Zayas & Potts 500
Kellogg, Ethel T. 3
Kidder & Co., A. M. 2
Kirkland, Rosalie Wilson 29
Kirtland, Josephine B. 10
Kirtland, Katherine C. 5
Kirtland, May 5
Kissell, Kinnicutt & Co. 25
Kittredge, Benjamin R. 23
Knauth, Nachod & Kuhne 525
654 Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn for Louisa A. Schermerhorn 100
Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn for Anna Margaret Fisher 310
Knickerbocker Trust Co., Ttee. u/w J. M. Schermerhorn for Catherine E. Henry 290
Knickerbocker Trust Co. & S. D. Ripley, Ttees for Julien A. Ripley 7
Krumbhaar, Edw. Bell 29
Kuebler, Christine 4
Kunreuther, Henry 2
Kuttroff, Frederick 20
Laning, Mary M. 22
Larrabee, Ruth Estelle Loop 10
Law, Est. of George 200
Lee, Caroline K. 4
Lee, John R. 100
Lee, Ralph R. 20
Lester, A. Edith 4
Levi, Abram L. 20
Levi, Jules C. 20
Levi, Lewis 50
Lewinsohn, Minnie 40
Lewis, Edith R. 1
Lloyd, Jeannette M. 1
Logan & Bryan 300
Lowitz, R. M. 50
Lynch, P. J. Md. dec. 115
Lynch, Rachel A. Excx. of Est. of Rachel A. Cartwright, dec. 200
McCurdy, Henderson & Co. 200
McGaw, Est. John A. 150
McKinley, Minerva C. 100

Mabbatt, Josephine H.	22	Moffatt, Jr., Benj.	40	655
MacDougal, Marianna C.	287	Moller, Paul E.	20	
Malcolm, Marguerite	6	Moody, Carrie S.	2	
Manson & Co., Thos. L.	150	Moore, Orrin W. & Kate B. DeLano, Excrs. of F. DeLano	109	
Marquand, John B.	2	Moore & Schley	2,200	
Marsh, R. K.	10	Morton, Levi P.	100	
Mathewson, Marion	13	Mowry, Est. Wm. C.	138	
Mathewson, Mary E. as per deed of trust 1/18/04	700	Muhling, Francis J.	20	
Matthews, Chas.	75	Munger, Sue W. (Mrs.)	10	
Measey, William Maul	10	Murray-Taylor, Gertrude	20	
Meeks, Caroline C.	14	Myers, Adelaide P.	30	656
Meinel, Edward	10	Nash, Myles,	2	
Menzies, Chas. D. & J. Wilson Brodie	200	Nelson, Walter G.	200	
Mercantile Trust Co., as Sub. Ttee u/w W. J. Haddock	100	New Haven Trust Co., Ttee. for Elizabeth K. Wakeman, u/w Mary C. Wakeman	308	
Meredith, Wm. T. & Co.	257	New York Life Ins. & Trust Co., in trust for Emma C. Bills	276	
Merritt, Douglas—John P. Haines & John M. Knox, Ttees, under deed of trust, etc.	200	New York Life Ins. & Trust Co. in trust u/w Charlotte M. Goodridge,	57	657
Merritt, Elizabeth C.	80	Nichols, Edwin	5	
Meyer, Chas. F.	8	Nichols, Frank	5	
Meyer, Ella F.	3	Nichols, John	8	
Meyer, Francis T.	56	Norris, Harriet R.	20	
Meyer, Henry C.	15	North River Insurance Co., The	200	
Meyer, Louise U. (Mrs.)	10	Noyes, Charles P.	200	
Meyers, Alice G.	23	Oakley, Annie M.	73	
Meyers, Harry	40	Otto, Janette C.	2	
Migeon, Elizabeth F.	160	Owen, Francis T. dec.	287	
Miller, Daniel S.	30	Packard, Joseph E.	30	

658	Packard, Edith Sands	10
	Palmer, Julia A.	27
	Palmer, N. F. & A. R. McCanless, Ttees. Geo. W. Quintard under 9th clause,	75
	Parker, Thos. J.	5
	Parsons, Closson & McIlvaine	150
	Pearce, Mary J. T.	12
	Pearce, Mary J. T. & Martha T. Horton as Ttees. for Maria F.	
659	Outhouse u/w John J. Tait, dec.	8
	Peirce, Eliza C.	22
	Pell, James D.	10
	Pendleton, Arthur T.	175
	Penniman, Louise D.	46
	Pennington, Mary Vanderpool	32
	Percy, David	5
	Perry, Henry H.	16
	Peter, Anna W.	200
	Peters, Wm. S.	10
	Phelps, Ansel	10
	Phelps, Georgiana W.	8
660	Phila. Trust Safe Deposit & Ins. Co., Ttee. u/w Harriet Porter,	77
	Ttees. of Phila. Yearly Meeting of Friends	722
	Platt, Harriet W.	344
	Porter, J. Madison	2
	Post & Flagg,	20
	Pouch & Co.,	20
	Powers, Caroline B. dec.	345
	Prince, L. M. & Co.,	50
	Pyne, Kendall & Hollister,	14
	Quilhot & Son, S.	60
	Quintard, Geo. W. 3rd	76
	Ramsdell, Fannie V. N.	75
	Redmond & Co.,	1
	Reed, Sarah	4
	Reilly, Joseph A.	1
	Richards, L. Harry, dec.	10
	Richardson, Eleanor, H.	20
	Riddle, William	2
	Robbins, Helen C.	8
	Rohr, Eva	4
	Roof, Katharine K.	5
	Roof, Stephen W.	15
	Roos, Elias G.	23
	Rowland, Harriette H.	4
	Rowland, Henrietta H. (Mrs.) Gdn. for Henry A. Rowland,	4
	Rowland, Henrietta H. (Mrs.) Gdn. for Davidge H. Rowland,	4
	Runkle, Wm.	200
	Rusling, Marie Judson	18
	Rust, Edward G.	27
	Rust, E. Sumner	27
	Ruth, Wallace M.	50
	Ryan, Geo. F.	200
	Sampson, Mary Wade	100
	Samuels, Jacobs	10
	Sands, Martha T.	100
	Sanford, A H.	10
	Sanger, Wm. Cary	100
	Sartorius & Einstein	200

Sartorius, Helen Smith 5
Savage, Joseph G. 4
Schermerhorn, J. Maus 5
Schlager, Jacob R. 15
Schmeisser, Ernst, John Hinrichs & Wm. Christopher Hinrichs, Ttees. u/w Georg Wilhelm Gail, 65
Schneider, Anna C. 20
Schott, Hubert M. 2
Sears, Fredk. R.—Richard D.—Philip S.—Herbert M., Ttees. u/w Fredk. R. Sears for Albertina H. Sears of Nahant, 70
Sears, Fredk. R.—Richard D.—Philip S.—Herbert M., Ttees. u/w Fredk. R. Sears for Marian S. Lovering, 104
Sears, Fredk. R.—Richard D.—Philip S.—Herbert M., Ttees. u/w Fredk. R. Sears for Grace Dabney Wrenn, 52
Sears, Philip S. & Herbert M., Ttees. under deed made by Alfred S. Dabney, etc., 52
Security Trust Co., 48
Seeley, W. E. 7
Shafer Josephine Judson 20
Shannon, Jos. T. 42
Shea, William J. 2 661
Sherwood, Matilda M. 268
Sherwood, Richard S. 270
Sherwood, S. Wakeman 81
Silverthorne, Asa N. 10
Simmons & Slade, 50
Simpson, Willis H. 20
Slater, Mabel Hunt, Henry S. Howe, Ttees. under 11th para. of will of Horatio N. Slater 414
Slater, Mabel Hunt, Henry S. Howe, Ttees. under 5th clause of compromise agreement, etc., 115 662
Sleight, Mary A. 276
Sloan, Samuel in trust for Edith S. Sloan 7
Sloan, Samuel in trust for Julian R. Sloan, 7
Sloan, Samuel in trust for Samuel, 2nd 12
Sloan, Samuel, in trust for Ttees. of the Estate of Saml., 2,113 663
Sloane, George 4
Smith, Chas. R. 50
Smith, Warren R. 5
Smith, W. E. R. & Co., 25
Societe Ononyme des Papeteries Darblay, 100
Spencer, Bird W. 115
Spry, Franklin B. 20
Stanton, Hedwig J. 30
Stevens, Eleanor M. 16

664 Stevenson, Elizabeth F. 190
Stiefel, Moses 10
Stone, Lucy 22
Strasburger, Sarah 16
Strong, Sturgis & Co., 600
Strouse, Dora 10
Sunstein, Leon C. 10
Sweny, Louise Parker 10
Taber, Mary J. 46
Tailer, W. H. & R. W., Ttees. for Mary T. Spencer, 218
Tanenbaum, Clara 11
665 Tate & Hayes, 24
Tattersall, Henry H. 10
Taylor, Cath. A. P. R. Pyne & M. T. Pyne & L. Turnure, Ttees. Kate W. Winthrop 9,775
Taylor, Cath. A. P. R. Pyne & M. T. Pyne & L. Turnure, Ttees. Henry A. C. Taylor 9,775
Taylor, Smith & Hard, 100
Thayer, Elizabeth H. C. 5
Thomas, Caroline 12
666 Thomas, Emily 12
Thomas, Robert McKean 60
Tiffany, Louis C.—A. Mitchell, Chas. T. Cook & C. E. Miller, Ttees. Louise H. Tiffany, Trust 100
Tilden, Marion Eliza 1
Tilden, Sarah Walters 1
Tobey, Florence E. 69
Tobey, Grace E. T. 65
Tobias, Washington 1
Tod, J. Kennedy & Co. 2,300
Torbert, Est. of M. Fannie 10
Tower, Henrietta N. 11
Trustees of the General Clergy Relief Fund 5
Turnure, Est. David M. 300
Underhill, Francis Jay 40
Underwood, Bessie S. 10
The Union & New Haven Trust Co., Ttee. u/w Charles Dickerman for Ellen P. Bardeen 10
The Union & New Haven Trust Co., Ttee. u/w Robt. S. Ives for Caroline Ives Brinton 37
The Union & New Haven Trust Co., Ttee. etc., for Caroline Ives Harrower 37
The Union & New Haven Trust Co., Ttee. etc., for Alfred S. Ives 19
United States Trust Co. of N. Y., in trust 252
United States Trust Co. of N. Y., Ttee. Helen C. Bostwick *et al.* 133
United States Trust Co. of N. Y., Ttee. Helen G. Henry *et al.* 237
United States Trust Co. of N. Y., Ttee. u/w Alice W. Bronson 20
United States Trust Co. of N. Y., Ttee. W. H. Chandler 73

United States Trust Co. of N. Y., Ttee. u/w J. G. Moffet 266
United States Trust Co. of N. Y., Ttee. u/w A. Tobias for Edith R. Lewis 4
United States Trust Co. of N. Y., for Florian Tobias 4
United States Trust Co. of N. Y., for Francis H. Tobias 4
United States Trust Co. of N. Y., for Washington Tobias 4
United States Trust Co. of N. Y., for J. J. Van Nostrand 500
United States Trust Co. N. Y., Ttee. under 5th clause of will Elizabeth M. McDonald 46
United States Trust Co. N. Y., Ttee. u/w Joel B. Wolfe, dec. 400
United States Trust Co. N. Y., Ttee. etc., for Marie Louise Emmet 133
United States Trust Co. N. Y., Ttee. Jeannie S. Twombly 134
United States Trust Co. N. Y., Ttee., etc., Alonzo W. Balch for Eleanor C. Alba 9
United States Trust Co. N. Y., Ttee. for Adelaide M. Balch 9
United States Trust Co. N. Y., Ttee. for Eva Rohr 27
United States Trust Co. N. Y., Gdn. Mary McLeod Cameron 210
Van Blarcom, Wessels 20
Van Brunt, Albert H. 26
Vanderbilt, Harold S. 100
Van Deventer, Aug. 2
Van Duyn, Edward S. in trust for Constance Van Duyn 2
Van Duyn, Edward S., in trust for John Van Duyn 2
Van Duyn, Edward S., in trust for Mary Van Duyn 2
Van Duyn, Lucy L. B. 6
Van Dyk, Francis C. 100
Vannaque, Henry 1
Van Riper, Philip H. 10
Van Vechten, Frances 23
Van Wagenen, Emily D. & Gertrude Dodd, Ttees. for Emily D. Van Wagenen u/w John M. Dodd, etc. 103
VanWagenen, Emily D. & Gertrude Dodd, Ttees. for Gertrude Dodd 102

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870	VanWagenen, Emily D. & Gertrude Dodd, Ttees. for John M. Dodd., Jr., etc.	76	Watrous, Geo. D. & Chas. E. Curtis, Ttees. u/w Ezra C. Read	575
	VanWagenen, Emily D. & Gertrude Dodd, Ttees. for Elizabeth W. Tanner	92	Weaverson, Fred	45
	Van Winkle, J. Albert	150	Weir, J. Alden	10
	Vermilye, H. Rowland	3	Wells, Janet T.	6
	Vermilye, W. Gerard	3	Wells, Kate Z.	25
	Vincent, Walter B.	69	Westm, Fredk. R., dec.	300
	Vivian, Susan L. &		Westcott, Est. Mary E., etc.	138
871	John F. Patterson, Ttees. Est. Marshall O. Roberts	1,600	White, Virginia Kent	30
	Von Storch, Serena & Wm. Excrs. Est. Justus Von Storch	230	Whitehouse, Guill S.	100
	Voorhees, Jr., Margaretta Remsen	9	Whiting, Minerva	5
	Wainwright, Wm. P., as sole Ttee. for Adeline Wilson, formerly Adeline Blackburn	156	Wilkinson, Edward S.	5
	Waite, Mary G.	14	Willets, Amelia	9
872	Walker, Elizabeth L.	72	Williams, John N.	29
	Walker, Horace M.	32	Williams, J. B., dec.	250
	Wardwell & Adams	5	Williamsburgh City Fire Ins. Co.	214
	Warne, Frank L.	1	Wilmerding, E. Coster	8
	Washington Trust Co.	100	Wilson, David	7
			Wood, Wilfred	6
			Woodland, LeRoy	2
			Woodward, William	30
			Woolf, Morris	50
			Worrall, Lydia Malcom	3
			Wysong, Martha M.	748
			Young, Benjamin S.	2
			Young, Caroline M.	2
			Youngs, Robert M.	400

Petitioner's Exhibit P2.—List of Coal Handling Facilities Leased by D., L. & W. R. R. Co. to D., L. & W. Coal Co.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, RESPONDENT.

(DOCKET NO. 4914.) QUESTION 16.

A Description of Property.	B Location.	E Lessee, Annual Rental and Lease.
Yard and dock	Chicago, Ill., Division St.	
Trestle and site	Syracuse, N. Y., Butternut St.	
Geddes Yard (Land only)	Syracuse, N. Y., W. Fayette & Schuyler Sts.	
Canal Transer Trestle and site	Utica, N. Y., Erie St.	
Trestle and site	Utica, N. Y., Erie St.	
Site for Trestle, office, barn and scales,	Port Dickinson, N. Y.	
Trestle, stable and site	Brooklyn, N. Y., 26th St.	
Trestle & site	Bangor, Pa.	
Trestle & site	Halistead, Pa.	
Site for Trestle, office, barn and scales,	Stroudsburg, Pa.	
Trestle (no land)	Bangor, Pa.	
Trestle and site	Belfast Junction, Pa.	
Site for scales,	Catawissa, Pa.	
Site for platform,	Clarks Summit, Pa.	The D., L. & W. Coal Co. Lease, dated Aug. 2, 1909.
Site for Trestle,	Cresco, Pa.	
Site for Hopper,	Danville, Pa.	
Trestle & part of site,	East Bangor, Pa.	See Exhibit "A."
Trestle & site,	East Bangor, Pa.	
Site for Trestle,	Edelman's, Pa.	These properties and the properties described in Answer to Question 17 are covered by one Lease to The D., L. & W. Coal Co., in which the annual rental is fixed at $74,407.84.
Site for coal bins and scales,	Elmhurst, Pa.	
Site for bins,	Espy, Pa.	
Site for Trestle & scales,	Glenburn, Pa.	
Site for Trestle & scales,	Gouldsboro, Pa.	
Site for Trestle,	Grand Central, Pa.	
Site for Trestle & Warehouse,	Johnsonville, Pa.	
Site for bins and scales,	Kingsleys, Pa.	
Trestle & site,	Mt. Bethel, Pa.	
Pockets & site,	Narazeth, Pa.	
Site for Trestle & shed,	New Milford, Pa.	
Site for Trestle & scales,	Nicholson, Pa.	
Trestle (no land),	North Water Gap, Pa.	
Site for Trestle,	Pen Argyl, Pa.	
Trestle & site,	Pen Argyl, Pa.	
Site for Trestle, office & scales,	Portland, Pa.	
Site for Trestle & approach,	Scranton, Pa. (Green Ridge Br.)	
Site for bins,	Shickshinny, Pa.	
Office #215 and part #216 in Passenger Station,	Scranton, Pa.	

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, RESPONDENT.

(DOCKET NO. 4914.) QUESTION 17. (SHEET 1)

A	B	C–D	E
Description of Property.	Location	Now Held by Respondent.	Lessee, Annual Rental & Lease.
Trestle & site	Bloomfield, N. J. (Conger St.)		
Site for Office, shed, stable & scales	Bloomfield, N. J. (Conger St.)		(See Sheet 4)
Stocking Plant	East Dover, N. J.		
Trestle, office, dwelling and site	Harrison, N. J. (4th St.)		
Trestle, office & site	Newark, N. J. (High St.)		
Trestle & site	Paterson, N. J. (Marshall St.)		
Stocking Plant	Pt. Morris, N. J.		
Trestle & site	Summit, N. J.		
Site for bins & scales	Athenia, N. J.		
Trestle & site	Chatham, N. J.		
Site for bins & scales	Delawanna, N. J.		
Site for Trestle	Dover, N. J.		
Site for Trestle	Dover, N. J.		
Site for Trestle	Dover, N. J.		
Site for Bins	Hackettstown, N. J.		
Site for Hopper	Hackettstown, N. J.		
Office & site for Office	Orange, N. J. (Highland Ave.)		
Trestle, stable & site and pier space	Hoboken, N. J.		
Site for Bins	Little Falls, N. J.		
Site for Trestle	Morristown, N. J.	These items held under general lease from Morris & Essex R. R. Co.	
Site for Pockets	Netcong, N. J.		
Site for Trestle & Yard	Morristown, N. J.		
Site for Office, stable & scales ..	Newark, N. J. (High St.)		
Site for Bins	Morristown, N. J.		
Site for Office	Newark, N. J. (Orange St.)		
Site for Bins	Morris Plains, N. J.		
Site for Trestle & shed	Orange, N. J.		
Site for Bins	Mountain View, N. J.		
Site for Office & scales	Orange, N. J.		
Site for Pockets, office & scales	Passaic, N. J.		
Site for Trestle	Paterson, N. J.		
Site for Office, shed & stable	Paterson, N. J.		
Site for part of Trestle	Paterson, N. J.		
Site for Office & scales	Paterson, N. J.		
Trestle, office, scales & site	Phillipsburg, N. J.		
Site for scales & bins	Pt. Morris, N. J.		
Trestle & site	Pt. Murray, N. J.		
Site for Bins	Rockaway, N. J.		
Site for office & scales	Stewartsville, N. J.		
Site for office & scales	Far Hills, N. J.		
Trestle & site	Chester, N. J.		
Site for Bins	Succasunna, N. J.		
Site for Trestle	Bernardsville, N. J.	These items held under general lease from Passaic & Delaware R. R. Co.	
Site for Trestle & office	Lyons, N. J.		
Site for Trestle & part of scale	Murray Hill, N. J.		
Trestle & site	Stirling, N. J.		

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, RESPONDENT.

(DOCKET NO. 4914.) (SHEET 2) QUESTION 17

A Description of Property	B Location	C–D How Held by Respondent	E Lessee, Annual Rental & Lease
Site for Bins	Changewater, N. J.	These items held under general lease from Warren R. R. Co.	(See Sheet 4)
Site for Trestle	Changewater, N. J.		
Site for Bins & scales	Bridgeville, N. J.		
Trestle & site	Delaware, N. J.		
Site for Hopper	Washington, N. J.		
Trestle, Office, scales & site	Washington, N. J.		
Site for Trestle	Binghamton, N. Y.	These items held under general lease from Valley R. R. Co.	
Site for Trestle	Binghamton, N. Y.		
Site for Trestle	Binghamton, N. Y.		
Site for Trestle & scales	Bridgewater, N. Y.	These items held under general lease from Utica, Chenango & Susquehanna Valley Ry. Co.	
Site for Bins	Brisben, N. Y.		
Site for Trestle & office	Clayville, N. Y.		
Site for Bins	Coventry, N. Y.		
Site for Bins & scales	Earlville, N. Y.		
Site for Bins & scales	East Winfield, N. Y.		
Site for Bins	Galena, N. Y.		
Site for Trestle, bins & scales	Greene, N. Y.		
Site for Bins	Haynes, N .Y.		
Trestle & site	New Hartford, N. Y.		
Site for Trestle, office & Barn	Norwich, N. Y.		
Site for Trestle & Bins	Oxford, N. Y.		
Site for Bins	Peelville, N. Y.		
Site for Trestle, office & scales	Richfield Springs, N. Y.		
Trestle & Site	Sherburne, N. Y.		
Site for Shed	Unadilla Forks, N. Y.		
Trestle & Site	Utica, N. Y.		
Site for Shed & Yard	Waterville, N. Y.		
Site for Trestle & scales	Waterville, N. Y.		
Site for Trestle & shed	Waterville, N. Y.		
Lake Trestle & site	Oswego, N. Y.	These items held under general lease from Oswego & Syracuse R. R. Co.	
Site for Trestle	Baldwinsville, N. Y.		
Site for Bins	Lamson, N. Y.		
Site for Office & Shed	Oswego, N. Y.		
Trestle, office & site	Oswego, N. Y.		
Site for Bins & scales	Stiles, N. Y.		
Site for Shed, scale & stable	Syracuse, N. Y. (South West St.)		
Site for Trestle, office & scales	Candor, N. Y.	These items held under general lease from Cayuga & Susquehanna R. R. Co.	
Site for Elevator & bins	Ithaca, N. Y.		
Site for Trestle, conveyer & shed	Ithaca, N. Y.		
Trestle, office, scales & site	Ithaca, N. Y.		
Site for Trestle	Owego, N. Y.		

82 THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, RESPONDENT.

(DOCKET NO. 4914.) (SHEET 3) QUESTION 17.

A	B	C–D	E
Description of Property	Location	How Held by Respondent	Lessee, Annual Rental & Lease
Lake Trestle & site	Buffalo, N. Y. (Erie St.)		
Stocking Plant	Checktowaga, N. Y. (E. Buffalo)		(See Sheet 4)
Site for Bins	Alexander, N. Y.		
Bin & Site	Alden, N. Y.		
Site for Shed, office & scales	Atlanta, N. Y.		
Site for Shed & scales	Avoca, N. Y.		
Trestle, scales & site	Bath, N. Y.		
Site for Trestle & scales	Big Flats, N. Y.		
Trestle & site	Buffalo, N. Y. (Seneca St.)		
Site for Sheds	Buffalo, N. Y. (Goethe St.)		
Trestle & site	Buffalo, N. Y. (Parish St.)		
83 Trestle & site	Buffalo, N. Y. (Erie St.)		
Trestle & site	Buffalo, N. Y. (Main St.)		
Trestle & site	Buffalo, N. Y. Walden Ave.)		
Trestle & site	Buffalo, N. Y. (Chicago St.)		
Site for Shed & office	Buffalo, N. Y. (Abbott Road)		
Site for Foreman's house	Buffalo, N. Y. (Miami St.)		
Site for Shed, office & scales	Buffalo, N. Y. (Delaware Ave.)		
Site for office	Buffalo, N. Y. (Amherst St.)		
Yard for Wagon storage	Buffalo, N. Y. (Davey St.)		
Site for Bins	Campbell, N. Y.		
Site for Bins	Craigs, N. Y.		
Site for Trestle & scales	Leicester, N. Y.		
Site for Bins	Craigsville, N. Y.	These items held under general lease from New York, Lackawanna & Western Railway Co.	
Site for Bins	Linwood, N. Y.		
Site for Bins & scales	Cohocton, N. Y.		
Site for Shed & scales	Litchfield, N. Y.		
Site for Bins	Coopers, N. Y.		
Site for Trestle, shed & barn	Corning, N. Y.		
Site for part of Trestle	Corning, N. Y.		
Site for Bins	Darien, N. Y.		
Site for Shed, office & scales	Dansville, N. Y.		
84 Site for Bins & scales	Depew, N. Y.		
Trestle & site	Elmira, N. Y.		
Site for office & scales	Elmira, N. Y.		
Trestle & Site	Elmira Heights, N. Y.		
Site for Trestle & scales	Horseheads, N. Y.		
Site for Bins	Kanona, N. Y.		
Site for Bins & scales	Lancaster, N. Y.		
Site for Bins & scales	Lowman, N. Y.		
Site for Shed & scales	Lounsberry, N. Y.		
Site for Trestle	Mt. Morris, N. Y.		
Site for Bins	Owego, N. Y.		
Site for Bins	Painted Post, N. Y.		
Site for Bins	Portway, N. Y.		
Site for Bins	Savona, N. Y.		
Site for Bins	Vestal, N. Y.		
Site for Trestle & scales	Vestal, N. Y.		
Site for Bins	Wayland, N. Y.		
Site for Bins & scales	Wilawana, Penna.		

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, RESPONDENT. 685

(DOCKET NO. 4914.) (SHEET 4) QUESTION 17.

A Description of Property	B Location	C–D How Held by Respondent	E Lessee, Annual Rental & Lease
Site for Office & shed	McGraw, N. Y.	These items Erie & Central New York R. R. a controlled Railroad.	
Site for Trestle	McGraw, N. Y.		
Site for Trestle	Branchville, N. J.	These items Sussex Railroad Co. a controlled Railroad.	
Trestle & Site	Andover, N. J.		
Bins & Site	Monroe, N. J.		
Site for Trestle	Lafayette, N. J.		
Site for Shed & barn	Netcong, N. J.		
Site for Trestle	Newton, N. J.		
Trestle, chute & site	Montrose, Pa.	This item Lackawanna & Montrose R. R. Co. a controlled Railroad.	
Yard & dock	Toledo, Ohio	Held under lease dated May 1, 1902, from Wabash Railroad Co. for a term of 10 years, expiring May 1, 1912, at annual rental of $1.00 (Nominal rental as result of adjudicated litigation).	All properties on Sheets 1 to 4, and properties described in Answer to Question 16, are covered by one Lease to D. L. & W. Coal Co. in which the annual rental is fixed at $74,407.84. See Exhibit "A."
Offices #1907 & #1911 in building #90 West St.	New York City	Included with other offices in lease from West St. Improvement Co. to D. L. & W. R. R. Co.	
Offices #1906 to #1910 inc. in building #90 West St.	New York City		

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688 **Petitioner's Exhibit P6---List of Stockholders of the Delaware, Lackawanna and Western Coal Company, Who Are Not Stockholders of the Delaware, Lackawanna and Western Railroad Co., October 7th, 1913.**

Abbott, J. H.	50	
Affleck, Est. Frank B.	6	
Alexander, Est. Archibald S.	50	
Allen, Eugenia S.	1	
Auchincloss, Catherine S.	25	
689 Barnum, Noah S.	20	
Barto, Hattie W.	28	
Bear, J. Ainslie	1	
Beguelin, H. Robert	50	
Bergen, Wm. E.	10	
Bermingham, John F.	75	
Betts, L. F. H.	100	
Betts, W. Rosseter	1	
Brigham, Helen T.	13	
Bright, Osborn W.	25	
Brooks, Reginald	275	
Brown, Caroline E.	10	
Brown, James H.	7	
690 Brown, Stewart	10	
Brown, Jr., W. Harmon	5	
Brown, Ward	6	
Burke, Geo. W.	25	
Butler, Herrick & Kip,	10	
Cabot, Louis	81	
Carberry, John D.	25	
Caron, Mary H.	3	
Castelli, Enrico (Baron)	190	
Chapman, W. H., Adm. Est. Eunice E. Hawley,	1	
Chapman & Seaman,	200	
Clement, Jesse B.	100	
Colony, Horatio	100	
Commercial Trust Co., N. J., as Ttee. under deed of trust of Matthew C. Jenkins,	16	
Curtis, Louise Burleigh, Est.	50	
Cushman, Belle V.	12	
Cutler, Otis H.	105	
Delanoy, Edwin P.	8	
Dill, Edmund M.	12	
Dillon, Kathryn	8	
Dodd, Gertrude	22	
Dodd, Jr., John M.	17	
Dowson, E. Effie	1	
Driggs, Fred. W.	10	
Dumont, H. K.	10	
Dunn, Mary E.	10	
Edey, Brown & Sanderson,	125	
Eustis, Augustus H.	27	
Eustis, Frederick A.	27	
Fisher, Alice A.	25	
Fletcher, Allan M.	25	
Ford, Sarah C.	49	
Foster, Pierrepont B.	175	
Gail, Helen C.	5	
Gibbens, Isabel C.	20	
Gilbert, Est. Elizabeth R.	4	
Gill, Sallie Howard	20	

Gipperich, Carl	2	Lipper & Co., Arthur	7	69
Goodsell, Mary A.	60	Livermore, Josephine W.	260	
Goodwin, E. J.	10	Lockwood, Emma	2	
Gorton, Orren A.	20	Lockwood, Stephen O.	15	
Gray, Anna M.	6	Loomis, E. E.	325	
Greene, Inslee Blair	1	Lyle, Herbert C.	6	
Greene, William A.	1	Lynch, Rachel A.	340	
Greenebaum, F. H.	7	McEathron, G. W.	50	
Gulick, Alexander R.	10	Mabon & Co.	7	
Gulick, Est. Annie R.	100	Marlatte, Jennie	18	
Hall, Francis P.	1	Mason, Wallace L.	1	
Hall, Nathaniel	1	Maynard, Samuel R.	50	
Handley, Mary L.	2	Meeks, Joseph V.	3	
Harrower, Caroline Ives	8	Memory, S. G.	50	69
Hatch & Co., Frederic H.	1	Middleton, Lillie C.	25	
Hemenway, Augustus	81	Miller, David H.	25	
Herrick, Berg & Co.	2	Miller, Sarah W. S.	25	
Heyl, Julia S.	40	Mills, John K.	11	
Hickey, William F.	5	Morgan, Livermore & Co.	236	
Hoffman, Albert L.	5	Muller & Nash	16	
Hoffman, Jr., F. Burrall	5	Muller, Wm. S.	2	
Hoffman, Murray	5	Nelson, Helen D.	7	
Hoffman, William Wickham	5	Nisbet, William B.	3	
Howland, Est. Cornelia S.	49	Owens, J. J. A.	50	
Hoyt, J. R.	1	Palmer, Anna S.	50	
Hubbard, Maude	1	Papineau, Est. M. E. W.	30	
Inman, Frederic C.	61	Peck, Arthur N.	50	69
Jacobs, Margaret A.	2	Pell & Co., S. H. P.	4	
Jenney, W. S.	100	Phillips, R. A.	20	
Jones, Wm. L.	1	Phipard, Leonora L.	10	
Joseph, Martin	3	Pinney, Est. Maria W.	15	
Kennaday, Paul	50	Polk, Isabella G.	12	
Knapp, Lucia B.	1	Porter, Dorothy Dwight	1	
Knowlton, Junius C.	13	Porter, Mary V. D.	9	
Lahey, Lyda E. B.	10	Porter, Mary V. D., Ttee. for Eliza M. & J. M. Porter	25	
Lee, Higginson & Co.	100	Purdy, Est. John C.	1	

Pyne, 2nd, Percy R.	50	Swortfiguer, Henry Bragdon	50
Rasmus, Carl G.	16	Tait, Est. John J.	10
Raven, Anton A.	125	Taylor, Gertrude Murray	4
Read, E. H.	50	Taylor, Auchincloss & Joost	20
Richmond, William H.	34	Terhune, Nicholas	50
Rogers, Geo. T.	100	Thayer, Gladys B.	275
Russell, D. E.	125	Thorne, Jonathan	6
Rutherford, Henry	200	Tillman, Elizabeth	20
Savings Bank of Walpole	50	Town, J. J.	50
Schroeder, Henry H.	15	Van Wagenen, Emily D.	23
Scott, Mary C.	27	Von Storch, Serena	50
Seymour, Frances Lord	50	Von Wecheln, Jr., John H.	15
Shattuck, Albert R.	25	Walker, Frank H.	10
Simpson, Martha A.	5	Wayland, Martha W. R.	125
Sloan, 3rd, Samuel	1	Welch, Thomas F.	2
Smith & Co., Edward B.	3	Wells, Caroline Thorn	10
Smith, H. A.	25	Williams, Alice Castree	18
Smith, Walter S.	9	Williams, Est. Sarah	120
Stafford, DeWitt	44	Wilson, Julia S.	20
Stillman, James A.	100	Wolff, Charles E.	25
Stone, Albert	13	Zimmermann, John	200
Sturtevant, Clifford L.	10		
			6,907

Petitioner's Exhibit P8.—Balance Sheet of Coal Company of December 31st, 1912.

(Printed in full in Minutes, *ante*, p. 43.)

Petitioner's Exhibit P9---Report of the Delaware Lackawanna and Western Coal Company, December 31, 1910. 697

BOARD OF DIRECTORS.

George F. Baker, Jr. James A. Stillman.
George Blumenthal. Henry R. Taylor.
Percy R. Pyne, 2nd. William H. Truesdale.
Edward E. Loomis.

OFFICERS.

E. E. Loomis, President. 698
D. E. Russell, Vice-President and General Sales Agent.
J. J. A. Owens, Secretary and Treasurer.
Samuel Kerr, Assistant Secretary and Assistant Treasurer.
W. S. Jenney, General Counsel.
J. F. Bermingham, Auditor.

Report of the Directors of
THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY.
New York, January 25th, 1911.

To the Stockholders:

After the Courts had established the constitutionality of the Commodity Clause of the Hepburn Act, thereby prohibiting the Lackawanna Railroad from transporting in Interstate Commerce coal which it owned, The Delaware, Lackawanna and Western Coal Company was incorporated under the laws of the State of New Jersey and commenced business August 1st, 1909. 699

The Coal Company purchased all the coal held in stock by the Railroad. It leased all the trestles, docks, storage plants, etc., used by the Railroad for handling its commercial coal. It also entered into an agreement to purchase at the mines all the Railroad Company's coal on the regular es-

700 tablished basis obtaining in the Anthracite Regions, known as the Individual Operators' 65 per cent. Agreement.

The results of the Coal Company's operations for the seventeen months ending December 31st, 1910, are shown on the following pages.

For the Directors,

E. E. LOOMIS,
President.

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY

CONDENSED GENERAL BALANCE SHEET

701

December 31st, 1910

ASSETS

Furniture and Fixtures	$ 11,127.26
Coal on Hand	3,326,394.07
Due from Agents	4,379,068.37
Bills Receivable	95,000.00
Accounts Receivable (Sundry)	12,463.36
Cash on Hand and in Banks	3,578,515.99
	$11,402,569.05

702 **LIABILITIES**

Capital Stock (issued)	$ 6,590,700.00
Accrued Rentals	44,504.34
Accounts Payable	3,152,253.93
Reserve Account (Depreciation)	73,179.78
Unpaid Dividends	165,401.25
Profit and Loss—Surplus	1,376,529.75
	$11,402,569.05

PROFIT AND LOSS ACCOUNT

703

August 1st, 1909 to December 31st, 1910

Coal Sales	$55,283,944.41
EXPENSES	
Cost of Coal and Transportation	$50,956,058.39
Handling and Selling	1,980,582.07
Rental of Trestles, etc.	179,730.28
Taxes and General Expenses	107,225.87
Total Expenses	$53,223,596.61
Profit from Operation	2,060,347.80
Other Income (Interest, etc.)	140,003.20
Net Profit,	$2,200,351.00
LESS	
Dividends	823,821.25
Surplus	$ 1,376,529.75

704

705

706 **Petitioner's Exhibit P10---Delaware, Lackawanna & Western Coal Company, Accounting Department, Statement of Cost Covering Coal Handled at Cheektowaga, Port Morris & Dover Storage Plants from August 1, 1909, to December 31, 1912.**

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY

Accounting Department

Statement of Expenses and Cost Per Ton of Coal Handled At Cheektowaga Trestle.

707 *From August 1st, 1909 to December 31st, 1912.*

EXPENSES:	
Discharging, etc.	$ 15,087.91
Superintendence	316.16
Power	11,164.76
Watchmen and Others	6,235.71
Clerks and Attendants	69.49
Tools and Supplies	375.02
Material and Labor	1,934.70
Rent	41,000.00
Insurance	1,710.00
Postage, Telephone & Telegraph	102.50
Other	10.76
708 Injuries	1,862.43
Total Expenses	$ 79,869.44

709

Tonnage Handled:		
Unloaded into stock	$249,639.14	
Reloaded from stock	257,499.06	$507,139.00
Cost per ton one way		$ .157
Cost per ton both ways		.314
In addition to the above		
Coal cost when purchased	$792,561.74	
Value when shipped out	767,235.04	25,326.70
Per ton		.10

710

Cost of operating plus loss in value of coal stocked	$105,196.14
Total Loss per ton % of operating and loss in value	$.414

Note:

No regrading done at Cheektowaga. Coal screened at East Buffalo Transfer & Erie St. Lake Trestle. Such loss would be chargeable to the above plant and would be an additional loss.

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY

Accounting Department

711

Statement of Expenses and Cost Per Ton of Coal Handled At Dover Storage Plant.

From August 1st, 1909 to December 31st, 1912.

EXPENSES:

Discharging, etc	$ 6,362.62
Superintendence	3,452.76
Power	9,878.13
Watchmen and Others	1,169.89

712	Clerks & Attendants		1,521.85
	Tools and Supplies		3,472.96
	Material and Labor		1,449.11
	Rent		14,008.30
	Postage, Telephone & Telegraph		8.11
	Other		161.69
	Total Expenses		$ 41,485.42
	Tonnage Handled:		
	Unloaded into Stock	268,296.12	
	Reloaded from Stock	217,493.05	485,789.17
	Cost per ton one way		$.085
713	Cost per ton both ways		.170
	In addition to the above:		
	Coal cost when purchased	$482,892.59	
	Value when shipped out	461,845.65	21,046.94
	Per ton		.086
	% of shortage: 1,227.15 Tons Value		5,317.26
	Per ton		.022
	% of Regrading:		
		Tons.	
	Stove to Chestnut	77.06	
	" " Pea	775.18	
	" " Buckwheat	1,422.17	
714	" " Barley	1,561.19	
		3,838.00 Loss	9,652.56
	Per ton		.040
	Total cost of operating plus value of shortage loss in cost value of coal stocked and regrading		$77,502.18
	Per ton		.318

715

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY

Accounting Department

Statement of Expenses and Cost Per Ton of Coal Handled At Port Morris Storage Plant

From August 1st, 1909 to December 31st, 1912.

EXPENSES:		
Discharging, etc.		$ 5,121.12
Superintendence		1,257.44
Power		7,497.86
Watchmen and Others		274.19
Clerks and Attendants		529.08
Tools and Supplies		1,299.99
Material and Labor		374.12
Rent		2,716.74
Postage, Telephone and Telegraph		3.11
Other		78.24
Injuries		200.00
Total Expenses:		$19,351.89
Tonnage Handled:		
Unloading into stock	22,495.15	
Reloaded from stock	62,664.15	85,160.10
Cost per ton one way		$.226
Cost per ton both ways		.452
In addition to the above the following shortages incurred:		
	Tons.	
Buckwheat	514.07	
Rice	587.02	
Barley	2,146.03 Value	3,626.78
Per ton		$.085
Total cost of operating plus value of shortage		$22,978.67
Per ton		$.54

716

717

718 **Petitioner's Exhibit P11.—Lease by D., L. & W. Railroad Co. to D., L. & W. Coal Co.**

THIS AGREEMENT, made and entered into this 2nd day of August, 1909, By and Between the DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, a corporation of the State of Pennsylvania, hereinafter called the "Railroad Company," party of the first part, and THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY, a corporation of the State of New Jersey, hereinafter called the "Coal Company," party of the second part, WITNESSETH:

That, Whereas, the Railroad Company owns, leases or
719 controls, and also operates, various coal stocking plants, coal storage plants, coal trestles and pockets, mentioned and described in Schedule "A" hereto attached, and also owns, leases, or controls, certain other coal trestles, coal pockets, coal elevators, piers, docks and lands, used for handling, storing and the sale of coal, which it has demised or sublet to various persons, firms and corporations, or by agreement permitted the use thereof by them, and which said facilities are set forth and described in Schedule "B" hereto attached;

And, Whereas, the Railroad Company has also entered into contracts for the sale of coal with the persons, firms and corporations mentioned in Schedule "C" hereto at-
720 tached, which contracts provide for the use by such persons, firms and corporations of coal trestles, coal pockets, and other facilities, owned, leased or controlled by the Railroad Company, and in the said schedule mentioned and described; and,

Whereas, under date of August 2nd, 1909, the parties hereto entered into a contract whereby, among other things, it was agreed that the properties mentioned in Schedule "A" should be leased to the Coal Company by the Railroad Company; that the leases and contracts mentioned in Schedules "B" and "C" should be taken over by the Coal Company, and that the Railroad Company should also lease

to the Coal Company rooms in the Railroad Company's station at Scranton, and suitable quarters at No. 90 West Street, in the City of New York. 721

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, to be kept and performed by the parties hereto respectively, it is agreed between them as follows:

FIRST:—The Railroad Company agrees to lease and demise, and does by these presents lease and demise, unto the Coal Company, and the Coal Company agrees to take, and does hereby take, of the Railroad Company, for and during the term of this contract, for the purpose of handling, shipping, storing and selling of coal, all the coal storage and coal shipping plants, coal trestles, coal pockets, piers and docks, set forth in Schedule "A" hereto attached, and as shown and designated on the blue prints forming part of said schedule, together with all machinery and appliances used in connection therewith. 722

SECOND:—The Railroad Company agrees to lease and demise, and does by these presents lease and demise, unto the Coal Company, and the Coal Company agrees to take and does hereby take of the Railroad Company, for and during the term of this contract, for the purpose of handling, storage and sale of coal, all the coal trestles, coal pockets, lands and premises, set forth and described in Schedule "B" hereto attached, as the same are now possessed, used and occupied respectively by the persons, firms and corporations named in the said schedule, subject, however, to the existing leases and contracts under which said premises are respectively now possessed, used and occupied as aforesaid. 723

The Railroad Company does hereby assign, transfer and set over unto the Coal Company, all its right, title and interest in the said leases and contracts, and all rents, issues and profits, moneys, rights and benefits which shall be earned or may accrue thereunder during the term of this

724 contract. All moneys due and payable by the terms of such leases and contracts on or prior to August 2nd, 1909, all sums owing to the Railroad Company for coal sold and delivered prior to August 2nd, 1909, and the proportionate part of any rentals which have accrued under said leases and contracts up to the said date, although not then due and payable, shall belong to and be paid to the Railroad Company.

And likewise, upon the termination of this agreement, the Coal Company shall account for and pay to the Railroad Company, the proportionate part of any moneys collected in advance on account of rentals under existing leases or contracts, or leases or contracts affecting prem-
725 ises herein demised, which may be hereafter made.

The Coal Company agrees to assume said leases and contracts and all the undertakings, obligations and liabilities of the Railroad Company thereunder, and to keep and perform all the terms, covenants and conditions in the said leases and contracts to be kept and performed on the part of the Railroad Company, except as hereinafter provided.

THIRD:—The Railroad Company also agrees to lease and demise, and does hereby lease and demise, to the Coal Company, the premises mentioned and described in Schedule "D" hereto attached, for and during the term of this agreement, to be used solely for office purposes.

726 And that as to the premises in said schedule mentioned, at No. 90 West Street, in the City of New York, the Coal Company will in the use and occupation thereof conform in all respects to the terms, conditions and regulations specified and set forth in the lease thereof from the West Street Improvement Company to the Railroad Company, dated December 28th, 1906, and this demise of said premises is subject to all the terms and conditions of said lease. As to the rooms in said schedule mentioned in the station of the Railroad Company at Scranton, the Coal Company agrees that in the use and occupation thereof, it will conform to all reasonable rules and regulations prescribed

by the Railroad Company. The Railroad Company shall 727
furnish heat, light, elevator and janitor service to the Coal Company for the said rooms at Scranton.

FOURTH:—The Railroad Company also hereby assigns, transfers and sets over unto the Coal Company, all of its right, title and interest in and to the contracts mentioned and described in Schedule "C" hereto attached, together with all rents, issues and profits, sums of money, rights, privileges and benefits which shall accrue thereunder or therefrom during the term of this contract; it being understood and agreed that all moneys due and payable by the terms of such contracts on or prior to August 2nd, 1909, all sums owing the Railroad Company for coal sold 728
and delivered thereunder prior to August 2nd, 1909, and the proportionate part of any rentals which have accrued thereon up to said date, although not then due and payable, shall belong to and be paid to the Railroad Company.

The Coal Company does hereby agree to assume the said contracts, and all the undertakings, obligations and liabilities of the Railroad Company thereunder, and to keep and perform all of the terms and conditions thereof on the part of the Railroad Company to be kept and performed. And the Coal Company does further agree that it will not assign the said Contracts without the consent of the Railroad Company, and that it will at the expiration of this agreement, re-assign, re-transfer and set over to the Rail- 729
road Company any and all of said contracts then existing.

FIFTH:—The Coal Company does further covenant and agree as follows:

That for and in consideration of the leases and assignments to it made by the Railroad Company, as hereinbefore set forth, it will pay to the Railroad Company at the office of its Treasurer in the City of New York, the annual sum of $74,407.84 in equal semi-annual installments, payable on the first business day of August and of February of each year.

730 That it will keep the coal storage and coal shipping plants, coal trestles, coal pockets, piers and docks mentioned in the First Section of this agreement, in repair, and will make all ordinary repairs at its own cost and expense, and to the satisfaction of the Railroad Company.

If it shall become necessary in order to meet the requirements of the business of the Coal Company, to construct on any of the premises described in Schedule "A," any new additional coal trestles, coal pockets, stocking or shipping plants, or an addition to any existing structure on said premises, the Railroad Company shall promptly make such construction, and thereupon the Coal Company shall pay to the Railroad Company in addition to payment of any
731 rentals which it is obligated to pay for the use of any facilities named in Schedule "A," a sum equal to five per cent. (5%) per annum on the amount expended in connection with any such construction.

If it shall become necessary to replace or reconstruct any such existing structures, or any substantial portion of any of them, because the same has been destroyed by fire, lightning or other causes, or because the same has so deteriorated from long continued use, or from age or decay, as to be unsafe or the further use thereof impracticable, the Railroad Company shall promptly make such replacements, or reconstructions, and thereupon, and from thenceforth, the Coal Company shall pay to the Railroad Com-
732 pany as annual rental for the premises affected by such replacement, a sum equal to five per cent. (5%) per annum on the agreed value, at the time of the completion of such construction, of such demised premises. Should the parties fail to agree upon such value, or should any dispute arise in regard to any of the provisions of this agreement, the same shall be arbitrated in the manner provided for settlement of disputes arising under a contract made by and between the parties hereto dated August 2nd, 1909, and by arbitrators chosen in the manner therein provided.

Where under the terms of the existing leases or con-

tracts, the Railroad Company is obligated to keep in repair any properties described in Schedule "B," it shall continue to assume that obligation, and agrees to continue to keep such properties in good repair at its own expense. Where under the terms of the existing leases or contracts the obligation of keeping in repair any properties described in Schedule "B" rests upon the tenant in possession and occupation thereof, the Coal Company assumes that obligation, and agrees with the Railroad Company that such properties shall be kept in good repair at its expense, the intent being that while the Coal Company may look to the tenant to comply with such obligation, such obligation as between the Coal Company and the Railroad Company shall rest upon the Coal Company. 733 734

Where any of the properties described in Schedule "B" have to be wholly or in a substantial part reconstructed at the expense of the Railroad Company (the obligation so to do resting upon the Railroad Company), because destroyed by fire, lightning or other causes, or because the same has so deteriorated from long continued use, or from age or decay, as to be unsafe or unsuitable for further use, it will reconstruct such properties, and the Coal Company shall thereupon, and from thenceforth, that is to say, from the time of the completion of such reconstruction, in addition to paying the rentals now obligated to be paid for the use of any facilities named in Schedule "B" by the tenant, pay to the Railroad Company an additional sum equal to five per cent. (5%) of the actual amount expended by the Railroad Company in connection with any such reconstruction. 735

That it will, at its expense, keep the structures upon the premises described in Schedule "A," and also the structures upon premises described in Schedule "B," which are owned by the Railroad Company, fully insured for the benefit of the Railroad Company, against loss by fire, in some solvent insurance company or companies to be approved by the Railroad Company.

736 That it will not make any alterations in or additions to any existing buildings, piers, docks, trestles, coal pockets, or other structures upon any of the premises by this agreement demised, nor erect nor allow to be erected or placed upon said premises any building or structures of any kind without the written consent of the lessor.

That it will not use or occupy, nor allow, the property herein demised, to be used or occupied, for any purpose other than the purpose for which the same is demised as hereinbefore provided.

That it will allow no nuisances to be created on any of the premises herein demised, and that it will, in the use and occupation of the said property, conform in all
737 respects to the laws of the United States, of the respective States in which the same is situated, and the ordinances and regulations of the municipalities wherein the same is located.

That it will not assign any of the leases herein granted, nor sublet the premises demised or any part thereof, nor make any new lease of any part of any of the premises herein demised, nor assign or renew any existing lease of any part of said premises, or any contract permitting the use of said premises, without the written consent of the Railroad Company.

That it will, at the termination of this agreement as-
738 sign, transfer and set over to the Railroad Company, any and all leases and contracts then existing affecting the use, occupation or enjoyment of any of the premises or property herein demised.

That at the termination of this contract it will quit and surrender the premises herein demised in as good condition as they are in at present.

That it will indemnify and save harmless the Railroad Company of and from any and all actions or causes of action, loss, damage, cost or expense, which may arise, grow out of or result from any injury to persons, though the same may result in death, or any injury to or loss of

property occurring on the demised premises, while in the use and occupancy of the Coal Company, unless such personal injury or injuries to, or loss of property, is due to the sole negligence of the Railroad Company, its servants or agents. 739

FIFTH:—This agreement shall become in effect on the beginning of the day of the date hereof, and shall expire at midnight on the 28th day of February, 1911, provided notice by one of the parties hereto to the other of its intention to cancel this agreement, as of said February 28th, 1911, shall have been given prior to August 1st, 1910. Should no such notice be served, the contract shall continue and be operative until the expiration of six months after either party shall notify the other in writing of its intention to cancel the contract, in which event it shall expire at midnight of the last day of the six months named in the notice of cancellation. 740

SIXTH:—It is mutually agreed that this agreement shall bind the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their corporate names to be signed and their corporate seals to be affixed, the day and year first above written.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COMPANY, 741
By W. H. Truesdale,
President.

Attest:
A. D. Chambers,
Secretary.

THE DELAWARE, LACKAWANNA
AND WESTERN COAL COMPANY,
By E. E. Loomis,
President.

Attest:
J. J. A. Owens,
Secretary.

742

SCHEDULE "A."

List of Facilities comprised in Schedule "A."

Bloomfield,	Land and retail trestle.
Buffalo	Erie Street lake trestle.
Cheektowaga	Stocking plant.
Chicago	Division St. yard and docks.
East Dover	Stocking plant.
Harrison	Retail trestle.
Newark	Retail trestle.
Oswego	Lake trestle.
Paterson	Coal pockets.
Port Morris	Stocking plant.
743 Summit	Retail trestle.
Syracuse	Geddes trestle (land only).
Utica	Canal trestle.

SCHEDULE "B."

List of facilities comprised in Schedule "B," showing location, occupant, and nature of facility demised.

Location. Occupant. Nature of Facility.

Alexander—J. H. Barnes, Land as site for coal bin.

Alden—Davison & Yeager, Land and coal bin.

Andover—W. R. Ayers, Land and trestle.

Athenia—Mier & Thorburn, Land as site for bins and
744 scales.

Atlanta—H. Wheaton, Land as site for coal shed, office and scales.

Avoca—W. H. Thomas, Land as site for shed and scales.

Bangor—Milton, Flory, F. S. Wise, Griffin Bros., Land and coal pockets; Light, Heat & Power Company, trestle only.

Baldwinsville—T. M. Toll, land as site for trestle.

Bath—George H. Parker, land, trestle and scales.

Bernardsville—Bernards Water Co., land as site for trestle.

745

Belfast Junction—E. W. Stem, land and trestle.

Big Flats—F. C. Cowan, land as site for trestle and scales.

Binghamton—S. M. Elliott & Co., land and trestle; S. & C. McKinney, land and trestle; Binghamton Gas Wks., land as site for trestle; Binghamton Light, Heat & Power Co., site for trestle; Binghamton Water Co., site for trestle.

Bloomfield—R. R. Johnson, land as site for shed, office, stable and scales.

Branchville—G. M. Ingersoll, land as site for trestle.

Bridgeville—George Boyer, land as site for bins and scale.

Bridgewater—C. H. Clark, site for trestle and scales.

746

Brisbin—C. E. Griffin, site for bins.

Buffalo—Eberl Coal Co., land and trestle; Philip Day, land and coal shed.

Black Rock—E. L. Hedstrom, land and trestle Parish St.; land and trestle Erie St.; land and trestle Main St.; land and trestle Walden Ave.; land and trestle Chicago St.; site-shed & office, Abbott Road; site for foreman house, 4 Miami Street; N. F. Berndt, land as site for shed, office and scales; Gerhard, Lang Brewery Co., land as site for coal shed; H. W. Endree, office, Amherst Street; S. Kredel, wagon storage yard, Broadway and Davey Street.

Campbell—McCabe Bros., land as site for bins.

747

Candor, F. L. Heath, land as site for trestle, office and scales.

Catawissa—C. N. Eddy, land as site for coal scales.

Changewater—Grant Moore (J. D. Bowne, successor), land as site for coal bins; Tidewater Pipe Co., land as site for trestle.

Chatham—.....land and trestle.

Chester—H. W. Cyphers, land and trestle.

Clark's Summit—Nichols & Co., land as site for platform.

Clayville—F. A. Rhodes, land as site for trestle and office.

748 Craigs—F. C. Lent, land as site for bins.

Craigsville—.....land as site for bins.

Cresco—J. A. Seguine, land as site for trestle.

Cohocton—J. C. Cuff, land as site for bins and scales.

Coopers—M. M. Veazie, land as site for bins.

Corning—Temple & McIntosh, land as site for trestle, sheds and barn.

Corning—Hutchinson & Miller, land as site for part of trestle.

Coventry—H. D. Kenyon, site for bins.

Danville—R. J. Pegg, land as site for hopper.

Darien—H. W. Harmon, land as site for bins.

Dansville—C. A. Snyder, land as site for shed, office and
749 scales.

Delawanna—W. Fredericks, land as site for bins and scales.

Delaware—Geo. T. Prall, land and trestle.

Depew—Keipfer Bros., land as site for bins and scales.

Dover—Park Union Lumber Co., land as site for trestle; Dover Lbr. Co., land as site for trestle; Shoemaker & Co., land as site for trestle.

Earlville—Wm. Preston, land-site, bins and scales.

East Bangor—Bray Bros. & Hasley, land and trestle; East Bangor Slate Company, trestle and part of site.

East Winfield—J. F. Roberts, land as site for bins and scales.

750 Edelmans—M. D. Ackerman, land site for trestle.

Elmhurst—J. McDade, land as site for bins and scales.

Elmira—Chemung Coal Co., land and trestle; Bert Yenger, site for office and scales.

Elmira Heights—Chemung Coal Co., land and trestle.

Espy—J. H. Miller, land as site for bins.

Far Hills—D. Dumont, office and scales.

Galena—W. C. Lindsay, land as site for bins.

Glenburne—J. E. Edwards, land-site for trestle and scales.

Gouldsboro—W. N. Latham, land-site for trestle.

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Greene—C. H. Graves, land as site for trestle, bins and scales.

Grand Central—E. A. Hahn, land-site for trestle.

Hackettstown—Lackawanna Leather Company, land-site for coal shed.

Hackettstown—Shields, Chambers & Co., land site for track hopper.

Hallstead—E. J. Churchill, land and trestle.

Harrison—Wm. McKenzie, Foreman's dwelling.

Haynes—E. B. Day, site for bins, etc.

Highland Ave.—A. M. Mathews & Co., land as site for office, and office.

Hoboken—Wm. Horre & Co., land, trestles, stables, and pier space. 752

Horseheads—B. F. Stamp, trestle and scales (site for).

Ithaca—C. H. Beach, land as site for elevator and bins; So. Side Coal Co., land as site for trestle, conveyor and shed; W. B. Pierce Coal Co., land and trestle, office and scales.

Johnsonville—J. F. Stier, land as site for trestle and warehouse.

Kanona—L. E. Geer, land as site for bins.

Kingsleys—A. J. Masters, land as site for bins and scales.

Lafayette—Armstrong & Demarest, land as site for trestle.

Lamson—L. E. Scriber, land as site for bins.

Lancaster—J. B. Schu, land as site for bins and scales.

Leicester—W. J. Randolph, land as site for trestle and scales. 753

Linwood—C. C. Chase, land as site for bin.

Litchfield—Wilson & Son, land as site for shed and scales.

Little Falls—W. D. Wilson, land as site for bins.

Lowman—B. C. Livingston, land as site for bins and scales.

Lounsbury—C. Lisenby, Jr., land as site for shed and scales.

Lyons—Lyons Dev. & Sup. Co., land as site for trestle, office, &c.

754 McGraw—J. M. Davis, land as site for office and shed.

McGraw—Empire Corset Co., land as site for trestle.

Monroe—J. H. Sutton, land and bins.

Montrose—Pope & Stroud, land, trestles & chutes.

Morristown—Morristown Gas Light Co., land as site for trestle; H. P. Witts, land as site for trestle & for storage; United Electric Co., storage and bins.

Morris Plains—D. M. Merchant, site for bins.

Mount Bethel—.....land and trestle.

Mountain View—Bailey-Winters Co., land as site for bins.

Mt. Morris—Mrs. K. Landers, lands as site for trestle.

Murray Hill—Murray Hill Coal Company, land as site for trestle & part of scales.

755 Nazareth—Naz. Coal & Lumber Co., 6 coal pockets.

Nazareth—P. S. Trumbower, 4 coal pockets.

Netcong—Drake-Bostedo Co., land as site for coal pockets; John Wills, land as site for barn and shed.

Newark—Howard Coal Co., land as site for office, stables, shed and scales; J. S. Clark, land for office.

New Hartford—G. W. Rice, land and trestle.

New Milford—D. W. Hager, land as site for trestle and shed.

Newton—L. S. Iliff Co., land as site for trestle.

Nicholson—M. Kelley, land as site for trestle.

Norwich, R. E. Rindge, land as site for trestle, office and barns.

756 North Water Gap—Analomink Paper Co., trestle only.

Orange—J. C. Conover, land as site for trestle and shed.

Orange—T. J. Kearney, land for office and scales.

Oswego—W. J. Hogan, office and shed (site for); Oswego Coal Co., land, trestle and office.

Owego—W. H. Corey, land for bins.

Owego—Colby, Elery & Co., land as site for trestle.

Oxford—Mead & Mead, land as site for trestle and bins.

Painted Post—D. N. Sayles, land as site for bins.

Passaic—Oliver Adams, land as site for pockets, office and scales.

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Paterson—Julius Brandeis, land as site for trestle; Howe & Hill, land as site for sheds and stables, also office and house; H. Steiner, land as site for part of trestle; Vert & Smethurst, land as site for office and scales.

Pen Argyl—Wm. Harding & Co., land, site for trestle; Jackson & Co. and Lobb's Sons, land as site for coal pockets; Jackson Bros., land and trestle; Wm. Master's Sons, land and trestle.

Poolville—E. D. Keith, land as site for bins.

Phillipsburg—T. L. Murphy, land, trestle, office and scales.

Portland, J. Williams, land as site for trestle, office, scales and shed.

758

Port Morris—E. S. Thompson, land as site for scales, warehouse, &c.

Portway—W. C. Folts, land as site for bins.

Port Murray—A. S. Searfoss, land and trestle.

Richfield Springs—J. D. Ibbotson, land-site, trestle, office and scales.

Rockaway—Strait Bros. Co., land as site for bins.

Savona—C. D. Davis, land as site for bins.

Scranton—S. Bolt & Nut Co., land as site for trestle and approach.

Sherburne—L. C. Palmiter, land and trestle.

Shickshinny—H. W. Agnew, land as site for bins.

Stiles—Henry Sullivan, land as site for bins and scales.

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Stewartsville, M. E. Dowling, land as site for office and scales.

Stirling—W. A. Holmes, land and trestle.

*Port Dickinson—Wilcox Bros., land as site for office, trestle, barn and scales.

Stroudsburg—Zabriskie & L'Hommedion, land as site for trestle, office, scale and barns.

Succasunna—J. D. Byram, land as site for bins.

Syracuse—W. T. Klink, land and trestle; G. S. Scott, land as site for shed, scales and barn.

Toledo—S. C. Schenck, Wabash yard and dock.

760 Unadilla Forks—B. J. Murray, land as site for shed.

Utica,—Gilmore & Sons, Faass, George Hanauer, land as site for trestle, and trestle.

Vestal—Owego Dairy Co., land as site for bins; F. L. Rounds, land as site for trestle and scales.

Washington—Washington Electric Co., land as site for track hopper; J. L. Shields, land, trestle, office and scales.

Waterville—J. A. Berril's Son, land for site as shed and yard; H. M. King, land as site for trestle and scales; F. W. Putman, land as site for trestle and shed.

Wayland—J. C. Magee, land as site for bins.

Wilawana—M. N. Jacklim, land as site for bin and scales.

761 Brooklyn—Burns Brothers, land trestle and stable.

SCHEDULE "C."

1. Contract dated March 20th, 1907, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and Arthur Hedstrom and others, trading under the firm name of E. L. Hedstrom, parties of the second part. Providing for the sale of coal for the Railroad Company, and leasing five (5) certain trestles of the Railroad Company in Buffalo, N. Y.

762 2. Contract dated June 22nd, 1906, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and M. R. Kelly and others, trading under the name of E. L. Hedstrom & Company, party of the second part. Providing for the employment of E. L. Hedstrom & Company of Chicago to sell anthracite coal for the Railroad Company.

3. Contract dated March 1st, 1905, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and S. C. Schenck, of the City of Toledo, Ohio, party of the second part. Providing for the

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employment of said Schenck to sell anthracite coal for the Railroad Company.

4. Contract dated March 31st, 1903, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and the Northwestern Fuel Company, party of the second part. Providing for the employment of the Fuel Company to sell anthracite coal for the Railroad Company.

5. Contract dated December 28th, 1903, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and the Milwaukee—Western Fuel Company of Milwaukee, Wis., party of the second part. Providing for the employment of the Fuel Company to sell anthracite coal for the Railroad Company.

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6. Contract dated March 16th, 1906, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and the Ogdensburg Coal & Towing Company, of Ogdensburg, N. Y., party of the second part. Providing for the employment of the Towing Company to sell anthracite coal for the Railroad Company.

7. Contract dated January 1st, 1903, by and between the Delaware, Lackawanna and Western Railroad Company, party of the first part, and Wm. Horre & Company of Hoboken, New Jersey, party of the second part. Providing for the sale of coal to said Horre & Company by the Railroad Company, and for the use and occupation by said Horre & Company of certain trestles, buildings and coal handling facilities, at Hoboken, New Jersey.

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SCHEDULE "D."

1. Office room in the building of the West Street Improvement Company, No. 90 West Street, in the City of New York, as follows

766 Offices Nos. 1907 and 1911.

The use in common with the Delaware, Lackawanna and Western Railroad Company, in the manner and to the extent now obtaining, of offices in said West Street Building Numbered 1906, 1908, 1909 and 1910.

2. Office room in the Delaware, Lackawanna and Western Railroad Company's station at Scranton, Pa., known and described as Room No. 215, heretofore used and occupied by the Assistant Line Sales Agent of the Railroad Company, and the use in common with the Delaware, Lackawanna and Western Railroad Company of Room No. 216 in said station to the extent and in the manner obtaining.

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Petitioner's Exhibit P12.—Statement of Sales, 1910, 1911, 1912.

Printed in full in Minutes, *ante,* p. 103.)

Petitioner's Exhibit P13.—Statement of Tonnage Sold Through Various Agencies.

Printed in full in Minutes, *ante,* p. 103.)

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Petitioner's Exhibit P14.—Notice to the Trade.

(Printed in full in Minutes, *ante,* p. 105.)

Petitioner's Exhibit P15.—Extracts from Mining Contract Between the D., L. & W. R. R. Co. and the Kingston Coal Company, Limited. 769

This Agreement, made this second day of December, in the year eighteen hundred and seventy-eight, between The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania, hereinafter called the "Railroad Company," of the one part, and the Kingston Coal Company, "Limited," a partnership association formed under the laws of the said State of Pennsylvania, hereinafter called the "Coal Company," of the other part: Whereas, Alexander J. Pringle, Elizabeth Pringle, Samuel Pringle, Rossana H. Pringle, Millicent Pringle, Caroline S. Pringle, George L. Pringle, Elias D. Culver and Sally Culver, his wife, of the first part, Clarissa Price, J. D. Cooper and Sarah E. Cooper, his wife, and Alexander J. Pringle and Mary C. Pringle, his wife, of the second part, Lois Hoyt of the third part, Isaac Tripp and David Morgan of the fourth part, by an indenture bearing date the 28th day of October, A. D., 1862, which is recorded in the office of the Recorder for the County of Luzerne, in the State of Pennsylvania, in Deed Book No. 90, on pages 43, &c., did lease and to mine let unto Charles P. Evans, party of the fifth part in said indenture named, his heirs, executors, administrators and assigns, all the coal in, under and upon certain pieces, parcels and tracts of land in the said indenture described, upon and subject to certain conditions and provisions in the said indenture set forth. 770 771

And whereas by an Instrument of writing bearing date the 10th day of January, A. D. 1863, the said Charles P. Evans did grant, bargain, sell, assign, transfer and set over unto the said Railroad Company, their successors and assigns, the aforesaid Indenture and all the estate, rights and property of the said Evans, acquired and to be acquired thereunder, which said Instrument of writing is recorded in the Recorder's office aforesaid in Deed Book No. 90, on page 47,

772 &c., to which said Indenture and Instrument of writing reference is hereby made, and the same are hereby made a part hereof so far as may be necessary to a proper understanding of this Agreement, and the rights of the parties hereto, hereunder.

The said Railroad Company have acquired and now own the two-thirds part of the tract of land described in said Indenture, containing one hundred acres and twenty-six perches, which at the time of making said Indenture belonged to David Morgan, and the said Railroad Company have also acquired and now own the one-half part, undivided, of the coal under the parcel of land described in said Indenture as containing 26 acres and 19 perches which
773 was excepted and reserved from said Indenture. And the said Railroad Company have also acquired and now own the two pieces of land, one containing eleven acres and forty-one perches and marked "B" the other containing four acres and fifty-three and one-half perches and marked "C" on the map hereto annexed; the other lands shown upon said map are the lands described in the aforesaid Indenture of October 28th, 1862; which map is hereby made a part of this Agreement, and is to be herewith recorded. The coals upon, in and under the aforesaid lands can be mined, cleaned and prepared more advantageously through the openings, and by the works made and erected upon adjoining lands controlled by the said Coal Company.

774 Now this Agreement Witnesseth: That the said Railroad Company and the said Coal Company, in consideration of the premises and the covenants and agreements hereinafter contained to be kept and performed by the said parties respectively, and of one dollar by each of the said parties to the other paid at or before the execution hereof, the receipt whereof they do hereby respectively acknowledge.

Agree as follows:

The said Railroad Company covenants and agrees to permit and allow the said Coal Company to enter into and upon the lands hereinbefore referred to, as held under

lease and owned by said Railroad Company, and to mine 775
and take therefrom all of the coal in, under and upon all of the aforesaid lands which the said Railroad Company, in virtue of the aforesaid Indenture of October 28th, 1862, and of their ownership of a portion of said lands, have the right to, or might mine and take therefrom; And the said Railroad Company also agree to permit and allow the said Coal Company to have and exercise in respect to the mining and taking of said coal, subject to the provisions hereinafter contained, all of the rights and privileges to the use of the surface of all of said lands which the said Railroad Company have the right to, or might exercise under said Indenture, in respect to the use of the surface of the said leased lands. 776

And the said Coal Company on their part covenant and agree to and with the said Railroad Company to, at the expense of said Coal Company, enter into and upon the said lands and to mine and take therefrom all the merchantable coal beneath the surface of said lands which can be of mining coal from similar lands in that vicinity for the time then being, and to clean and prepare the said coal at the colliery of the said Coal Company known as the "Kingston Colliery" situated on said adjoining lands, and at the said colliery to deliver the said coal to the said Railroad Company loaded into the cars of the said Railroad Company upon tracks to be provided by said Coal Company, ready for transportation to market; of which coal the said 777
Coal Company shall deliver One Hundred and fifty thousand (150,000) tons annually of which eleven-fourteenths (11.14) shall be delivered in equal daily deliveries as nearly as may be practicable with an efficient and uniform working of said colliery, between the last day of March and the first day of December, and the residue, three-fourteenths (3.14) in like daily deliveries, between the last day of November and the first day of April in each and every year (Sundays and the usual holidays excepted).

* * * * * * * *

(Three paragraphs next following omitted.)

778 And the said Railroad Company, on their part, in consideration of the delivery to them of said coal, and of the covenants and agreements hereinbefore contained to be kept and performed by the said Coal Company, do covenant and agree to and with the said Coal Company that they will (the said Coal Company keeping and performing the covenants and agreements hereinbefore and hereafter contained on their part) deliverer upon the tracks to be provided at said colliery as hereinbefore agreed, cars for the reception of said coal with as much regularity as their business at other collieries, and their sales of coal will admit of. It being distinctly understood and agreed that the said Railroad Company shall not be obligated to deliver
779 to the said Coal Company cars for the reception of said coal to any greater or further extent than the quantity of coal which the said Coal Company, by this agreement, agrees to deliver, bears to the whole quantity of coal by the said Railroad Company, for the time then being, mined at their own collieries and purchased from and transported for other parties; And the said Railroad Company further covenant and agree to receive from and pay said Coal Company for mining, cleaning, preparing and delivering said coal as aforesaid, and for all other things to be done by said Coal Company under this agreement, at the rates and in accordance with the scale following, to wit:

780 When the average price paid by the said Railroad Company to the miners employed at their aforesaid collieries is forty-eight and four hundred and sixty-three one thousandths (48.463.1000) cents per ton they shall pay to the said Coal Company one dollar and fifteen cents ($1.15) per ton for the coal delivered as herein provided. And whenever and as often as the aforesaid average price paid by the said Railroad Company to the miners at their aforesaid collieries shall be increased or decreased, the price to be paid to the said Coal Company shall be increased eight and a half cents (8½) per ton for every five (5) cents per ton of increase paid to the said miners, and decreased eight and

a half (8½) cents per ton for every five (5) cents per ton 781
of decrease paid to the said miners; and so in proportion to any greater or lesser increase or decrease for or from the aforesaid average price paid the miners at said collieries.

* * * * * * * *

(One paragraph next following omitted.)

And it is further covenanted and agreed by and between the parties hereto, as follows:

That the said Coal Company shall deliver to the said Railroad Company, in the manner hereinbefore provided, so much of the coal taken from the lands aforesaid which at said colliery may be manufactured into the size of coal known as "pea" as the said Railroad Company may wish to have delivered to them, and for so much of said size 782
of coal as the said Railroad Company may receive they shall pay to the said Coal Company as follows:

When the average monthly price obtained by said Railroad Company for pea coal at Hoboken is less than five-sixths (5-6) of the average price obtained for chestnut coal at the same place, they shall pay sixty-two (62) per cent. of the average price paid for chestnut; and when the average price so obtained is more than five-sixths of the price obtained for chestnut and less than the full average price of chestnut, they shall pay eighty-three (83) per cent. of the average price of chestnut; and when the average price so obtained for pea coal is equal to or exceeds the price of chestnut, they shall pay for pea coal the same price herein- 783
before agreed to be paid for the other sizes—this provision is not to be so construed as to give to the said Coal Company the right to have or dispose of any pea coal which may be made, that is not taken by the said Railroad Company, except at a price agreed upon, not exceeding fifteen per cent. of the price obtained by said Coal Company for said coal. That all payments for coal under this Agreement shall be made at the office of the said Railroad Company in the City of Scranton in currency, by the 15th day of each

784 month for the coal delivered during the preceding month.

* * * * * * * *

(Fourteen paragraphs next following omitted.)

In witness whereof the said Railroad Company has caused this agreement to be signed on its behalf by its President and its common seal to be hereto affixed and attested by its Secretary, the day and year first above written (December the second Eighteen hundred and seventy-eight), and on the same day the said Coal Company caused this agreement to be signed on its behalf by its Chairman and its common seal to be hereto affixed by its Secretary, and this agreement is also signed and sealed by two of the managers of said Coal Company.

785 (Seals attached.)

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,
By Sam Sloan,
President.

Attest:
Fred. F. Chambers,
Secretary.

THE KINGSTON COAL COMPANY,
By Thomas Beaver,
Chairman.

DANIEL EDWARDS, [SEAL.]
GEO. F. GEISINGER [SEAL.]
786 Managers.

Attest:
Geo. F. Geisinger,
Secretary.

Petitioner's Exhibit 16. 787

LIST OF BOARD OF MANAGERS OF THE D. L. & W. R. R. CO., A PENNSYLVANIA CORPORATION AND OF THE BOARD OF DIRECTORS OF THE D. L. & W. COAL CO., A NEW JERSEY CORPORATION, EACH OF WHICH HAS ITS OFFICE AT 90 West Street, Manhattan, showing the various other corporations with which these Managers or Directors are connected.

The following information obtained from the Corporation & Copartnership Directory, 1913, Directory of Directors, 1909-1910, last edition available, and Who's Who in America, 1912-1913; also Manual of Statistics of New York Stock Exchange for 1913, pp. 114, 203, 219, 494, & 671. See also Poor's Manual of R. Rs. 1913, Poor's Manual of Industrials, 1913, Poor's Manual of Public Utilities, 1913. 788

D. L. & W. R. R. CO. BOARD OF MANAGERS.
FREDERICK W. VANDERBILT, Director.

N. Y. C. & H. R. R. Co.
N. Y. C. & St. L. Rd. Co.
C. & N. W. Ry. Co.
C. C. C. & St. L. Ry. Co.
Canada Southern Ry. Co.
Canada Southern Bridge Co.
C. St. P. M. & O. Ry. Co.
L. S. & M. S. R. R. Co.
M. C. R. R. Co. 789
D. L. & W. R. R. Co.
Westshore R. R. Co.
L. E. & W. R. R. Co.
Pullman Co.
American Horse Exchange Ltd.
Buffalo Erie Basin Co., R. R. Co.
Carthage & Adirondack Ry. Co.
Carthage Watertown & Sackets Harbor R. R. Co.
Clearfield, Bituminous Coal Corp.

790 Detroit & Bay City R. R. Co.
Detroit & Chicago R. R. Co.
Detroit, Monroe & Toledo R. R. Co.
Detroit River Tunnel Co.
Dunkirk, Allegheny Valley & Pittsburgh R. R. Co.
Elkhart & West. R. R. Co.
Fort Wayne, Cincinnati & Louisville R. R. Co.
Gouverneur & Oswegatchie R. R. Co.
Hudson River Bridge Co.
Jersey City & Bayonne R. R. Co.
Kalamazoo & White Pigeon R. R. Co.
Lake Erie, Alliance & Wheeling R. R. Co.
Lincoln Safe Deposit Co.
791 Mahoning Coal R. R. Co.
Mohawk & Malone Ry. Co.
N. J. Junction Rd. Co.
N. J. Shore Line R. R. Co.
N. Y. & Harlem R. R. Co.
N. Y. & Northern R. R. Co.
N. Y. & Ottawa R. R. Co.
N. Y. & Putnam R. R. Co.
N. Y. Central, Niagara River R. R. Co.
N. Y. State Realty & Terminal Co.
Niagara Falls Branch R. R. Co.
Niagara, Grand Island R. R. Co.
Niagara River Bridge Co.
792 Northern Central Michigan R. R. Co.
Ottawa & N. Y. Ry. Co.
Pittsburgh & Lake Erie R. R. Co.
Pittsburgh, McKeesport & Youghiogheny R. R. Co.
Rutland R. R. Co.
St. Lawrence & Adirondack Ry. Co.
Shenango Valley R. R. Co.
Spuytenduyvil & Port Morris R. R. Co.
Sturgis, Goshen & St. Louis Ry. Co.
Swan Creek Ry. Co.

Syracuse, Geneva & Corning Ry. Co. 793
Terminal Ry. of Buffalo.
Tivoli Hollow R. R. Co.
Toledo, Can. South., & Detroit Ry. Co.
Walkill Valley R. R. Co.

HENRY A. C. TAYLOR, Director.

D. L. & W. R. R. Co.
Gayuga & Susquehanna R. R. Co.
Farmers Loan & Trust Co.
Metropolitan Opera & Real Estate Co.
Morris & Essex R. R. Co.
National City Bank of N. Y.
N. Y. Life Ins. & Trust Co. 794
Newport Trust Co.
Second National Bank.
Deer Range Construction Co. (Pres. & Director).
American Academy in Rome (Incorp.)
Industrial Trust Co. (Prov., R. I.).
Lackawanna Steel Co.

WILLIAM H. TRUESDALE (President D. L. & W. R. R. C.), Director.

D. L. & W. R. R. Co.
Bangor & Portland R. R. Co.
Chester R. R. Co. (Pres. & Director).
E. W. Bliss Co. 795
Erie & Central N. Y. R. R. Co. (Pres. & Director).
Glen Alden Coal Co.
Green R. R. Co. (Pres. & Direc.)
Hanover & Newport R. R. Co. (V. Pres. & Direc.)
Harlem Transfer Co.
Hoboken Ferry Co. (Pres. & Direc.)
Hopatcong R. R. Co. (Pres. & Direc.)
Lackawanna & Montroe R. R. Co.
Lackawanna R. R. of N. J. (Pres. & Direc.)

796 Lackawanna Valley Coal Co.
Lehigh & Hudson River Ry Co.
Morris & Essex R. R. Co. (Pres. & Direc.)
Morris & Essex, Extension R. R. Co. (Pres. & Direc.)
Mutual Life Insurance Co. (Trustee).
Newark & Bloomfield R. R. Co. (Pres. & Direc.)
N. Y. & Hoboken Ferry Co. (Pres. & Direc.)
N. Y., Lackawanna & Western R. R. Co., (Direc.)
N. Y., Lackawanna & Western R. R. Co., of Pa. (Pres. & Direc.)
Oswego & Syracuse R. R. (Pres. & Direc.)
Passaic & Delaware R. R. Co. (Pres. & Direc.)
797 Passaic & Delaware Extension R. R. Co. (Pres. & Direc.)
Sussex R. R. Co. (V. Pres. & Direc.)
Syracuse & Baldwinsville Ry. (Pres. & Direc.)
Syracuse, Binghampton & N. R. R. R. Co. (Pres. & Direc.)
Temple Iron Co.
U. S. Rubber Co.
Utica, Chenango & Susquehanna Valley R. R. (Pres. & Direc.)
Valley R. R. Co. (Pres. & Direc.)
Warren R. R. Co.

GEORGE F. BAKER, Director.

798 First National Bank of N. Y. (Chairman Board).
First Security Co. (President).
N. Y. & Long Branch R. R. Co. (Pres. & Direc.)
Metropolitan Opera & R. Estate Co. (Pres. & Direc.)
N. J. General Security Co.
Bankers Safe Deposit Co. (Vice-Pres.)
Jersey City Water Supply Co. (Vice-Pres.)
Northern Securities Co. (2nd V. Pres.)
N. Y. Central & Hudson River R. R. Co.
C. B. & Q. R. R. Co.

N. Y., C. & St. L. R. R. Co. 799
L. S. & M. S. Ry. Co.
Mich. Central R. R. Co.
Central R. R. Co. of N. J.
C. H. & D. Ry. Co.
Erie R. R. Co.
Lake Erie & Western R. R. Co.
Lehigh Valley R. R. Co.
Lehigh Valley Coal Co.
Northern Pacific Ry. Co.
Pere Marquetee R. R. Co.
West Shore R. R. Co.
Colorado & Southern Ry. Co.
U. S. Steel Corporation. 800
Chase National Bank.
First National Bank, Chicago.
National Bank of Commerce.
Astor Trust Co.
Guarantee Trust Co.
Manhattan Trust Co.
Newport R. I. Trust Co.
Industrial Trust Co. (Providence, R. I.)
Continental Insurance Co.
American Tel. & Tel. Co.
International Harvester Co.
New England Navigation Co.
N. Y. Edison Co. 801
N. Y. Mutual Gas Light Co.
N. Y., New Haven & H. R. R. Co.
Phila. & Reading Ry. Co.
Pullman Co.
Adams Express Co. (Member Board of Managers).
D. L. & W. R. R. Co.
Mutual Life Ins. Co. (Trustee).
Consolidated Gas Co.
Atlas-Portland Cement Co.

802 Bowery Savings Bank (Trustee).
Car Trust Investment Co., Ltd., London.
East Jersey Water Co.
Farmers Loan & Trust Co.
Lehigh & Wilkes-Barre Coal Co.
Liberty National Bank.
Mohawk & Malone Ry. Co.
Montclair Water Co.
Morton Trust Co. (merged with Guarantee Trust Co.).
N. Y. & Harlem R. R. Co.
N. Y. & Putnam R. R. Co.
N. Y. Clearing House Bldg. Co.
Penna. Coal Co.
803 Provident Loan Society of N. Y.
Spring Brook Water Supply Co.

WILLIAM ROCKEFELLER, Director.

Anaconda Copper Mining Co. (Trustee).
Consolidated Gas Co. (Trustee).
U. S. Trust Co. (Trustee).
Union Pacific R. R. Co.
C. M. & St. P. R. R. Co.
L. S. & M. S. Ry. Co.
N. Y. C. & H. R. R. Co.
N. Y., N. H. & Hartford R. R. Co.
Central, New England Ry. Co.
804 D. L. & W. R. R. Co.
Southern Pacific Co.
M. C. R. R. Co.
C. C. C. & St. L. Ry. Co.
Oregon Short Line R. R. Co.
Pittsburgh & Lake Erie R. R. Co.
L. E. & W. R. R. Co.
N. Y. Chicago & St. L. R. R. Co.
Amalgamated Copper Co.
National City Bank.

Hanover National Bank.
United Metals Selling Co.
N. Y. Mutual Gas Light Co.
Brooklyn Union Gas Co.
N. Y. Edison Co.
N. England Navigation Co.
Standard Oil Cos. (was Pres. & Direc. N. Y. Co., and is V.-Pres. & Direc. of N. J. Co.)
Dunkirk, Allegheny Valley & Pittsburgh R. R. Co.
Harlem River & Portchester R. R. Co.
Hartford & Conn. West. R. R. Co.
Mohawk & Malone Ry. Co.
N. Y. & Harlem R. R. Co.
N. Y. & Ottawa R. R. Co.
N. Y. & Putnam R. R. Co.
N. Y. Ontario & Western R. R. Co.
N. Y. State Realty & Terminal Co.
Poughkeepsie Bridge R. R. Co.
Rutland R. R. Co.
St. Lawrence & Adirondack Ry. Co.
West Shore R. R. Co.

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JAMES STILLMAN, Director.

National City Bank (Chairman Board Directors).
N. Y. Cent. H. R. R. R. Co.
C. & N. W. Ry. Co.
B. & O. R. R. Co.
Mich. Cent. R. R. Co.
N. Y. Chicago & St. L. R. R. Co.
West Shore R. R. Co.
Southern Pacific Co.
D. L. & W. R. R. Co.
Western Union Telegraph Co.
Hanover National Bank.
Riggs National Bank, Washington, D. C.
U. S. Trust Co.

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808 Lincoln National Bank.
North British & Mercantile Ins. Co. of N. Y.
North British & Mercantile Ins. Co. of Edinburgh, Scot.
Queens Ins. Co.
American Veterinary College (Trustee).
Audit Co. of N. Y.
Bowery Savings Bank,
Citizens Central National Bank.
Dunkirk, Allegheny Valley & Pittsburgh R. R. Co.
Fidelity Bank (V. Pres. & Direc.).
Fidelity Trust Co. (Kansas City, Mo.)
Fifth Avenue Safe Deposit Co. (Trustee).
809 Lincoln Safe Deposit Co. (Trustee).
Louisana Western R. R. Co.
Mohawk & Malone R. R. Co.
Morris & Essex R. R. Co.
National Butchers & Drovers Bank.
N. Y. & Harlem R. R. Co.
N. Y. & Putnam R. R. Co.
N. Y. & Ottawa R. R. Co.
N. Y. State Realty & Terminal Co.
N. Y. Trust Co.
Newport Trust Co.
Rutland R. R. Co.
St. Lawrence & Adirondack R. R. Co.
810 Second National Bank.
Syracuse, Geneva & Corning R. R. Co.
Terminal Ry. of Buffalo.
Terminal Warehouse Co. (Treas. & Direc.)

MOSES TAYLOR PYNE, Director.

D. L. & W. R. R. Co
Warren R. R. Co. (Pres.)
Cayuga & Susquehanna R. R. Co.
Commercial Trust Co. of N. J.

Farmers Loan & Trust Co. 811
Franklin Trust Co.
Harvey Steel Co.
Lackawanna Iron & Coal Co.
Lackawanna Steel Co.
Lake Carnegie Assn. (Pres. & Direc.)
Morris & Essex R. R. Co.
National City Bank of N. Y.
N. J. Zinc Co.
N. Y. Lackawanna & Western Ry. Co.
Newark & Bloomfield R. R.
Passaic & Delaware R. R. Co.
Princeton Bank.
Princeton Inn Co. 812
Princefon Pub. Co.
Sussex R. R.
United N. J. R. R. & Canal Cos.
U. S. Mortgage & Trust Co.
University Power Co. (Vice-Pres. & Direc.)
Utica, Chenango & Susquehanna Valley R. R. Co.
Valley R. R. Co.

HARRIS C. FAHNESTOCK, Director.

First National Bank (Vice- Pres).
East Jersey Water Co. (Vice-Pres.).
American Cotton Oil Co.
Central Cotton Oil Co.
Central R. R. of N. J. 813
Montclair Water Co.
Southern Ry. Co.
Western Union Tel. Co.
Bankers Safe Deposit Co.
N. J. Junction R. R. Co.
D. L. & W. R. R. Co.
Tide Water Pipe Co., Ltd.
First Security Co. (Pres. & Direc.).
N. J. General Security Co.

814 STEPHEN S. PALMER, Director.

N. J. Zinc Co. (Pres. & Direc.).
Ahnapee & West. Ry. Co. (Pres. & Direc.).
Bertha Mineral Co. (V.-Pres.).
Cayuga & Susquehanna R. R. Co. (Secretary, Treas.).
Colonial Assurance Co. (V.-Pres.).
Consolidated Gas Co.
Detroit, Hillsdale & Southwestern R. R. (V.-P.).
Empire Zinc Co., of Colorado (Pres.).
Empire Zinc Company of Missouri.
Farmers Loan & Trust Co.
Fort Wayne & Jackson R. R. Co. (V.-P.).
Franklin Safe Deposit Co.
815 Franklin Trust Co.
Greenbay & Western R. R. Co. (Pres., Chairman Board).
Harvey Steel Co. (Pres.).
Iola & Northern Ry. (Pres.).
Kewaunee, Green Bay & West. R. R. Co. (Pres.).
Lackawanna Steel Co.
McDonald Land & Mining Co. (Pres.).
Mineral Point Zinc Co. (Treas.).
National City Bank.
N. J. Zinc Co. of Pa. (Pres.).
N. Y. Edison Co.
N. Y. Mutual Gas Light Co.
816 Palmer Land Co. (Pres.).
Palmer Water Co (Pres.).
Prince Western Spelter Co. (Pres.).
Princeton Bank.
Robins Conveying Belt Co.
St. Louis & Hannibal Ry. (Pres.).
Tefft Weller Co.
U. S. Realty & Impr. Co.
Valley R. R. Co.

HAROLD S. VANDERBILT, Director. 817

D. L. & W. R. R. Co.
(Not noted in Who's Who in America, nor in Directory of Directors for years given above.)

WILLIAM FAHNESTOCK, Director.

D. L. & W. R. R. Co. (mem. Board Managers).
Metropolitan Steel Ry Co.
N. J. General Security Co.
N. Y. Phonograph Co. (Treas.).

JOHN D. ROCKEFELLER, JR., Director.

D. L. & W. R. R. Co.
Colorado Fuel & Iron Co. 818
American Linseed Co.
Merchants Fire Assurance Corporation.
General Education Board Baptist.
Standard Oil Co. of N. J.
U. S. Steel Corporation.
University of Chicago, Trustee.

Office 26 Broadway, Home 13 W. 54th Street, N. Y.

WILLIAM H. MOORE, Director.

Promoter "The Moore Group" of four corporations absorbed in U. S. Steel Corporation, also
Diamond Match Co.
National Biscuit Co. 819
American Tin Plate Co.
American Steel Co.

Director of:
U. S. Steel Corporation.
Chicago, Rock Island & Pacific Ry. Co.
Chicago, Rock Island & Pacific R. R. Co.
Rock Island Co. (Chairman Finance Committee).
D. L. & W. Ry. Co.
Western Union Tel. Co.

National Biscuit Co.
First National Bank of N. Y.
American Can Co.
Continental Fire Ins. Co.
Chicago & Eastern Ill. R. R. Co.
Evansville & Indianapolis R. R. Co.
Evansville & Terre Haute R. R. Co.
Evansville Belt Ry. Co.
Fidelity Fire Ins. Co.
First Security Co.
Kansas City, Fort Scott & Memphis Ry. Co.
Kansas City, Memphis & Birmingham R. R. Co.
Keokuk & Des. Moines Ry. Co.
National Horse Show Assn. of America Ltd.
Peoria & Bureau Valley R. R. Co.
Price Flavoring Extract Co.
Rock Island Co.
St. Louis & San Francisco R. R. Co.

GEORGE F. BAKER, Jr., Director.

D. L. & W. R. R. Co.
D. L. & W. Coal Co.
First National Bank (Pres. & Direc.),
Chase National Bank.
Chicago, Peoria & St. L. Ry. Co.
First Security Co. (3d V. P.)
Jersey City Water Supply Co.
N. Y. & Long Branch R. R. Co.
Pere Marquette R. R.
Quincy, Omaha & Kansas City R. R. (Pres.)
Tidewater Oil Co.
Tidewater Pipe Co., Ltd.

JOHN F. TALMAGE, Director.

C. B. & Q. R. R. Co.
Colima Lumber Co.

Mines Finance Co.
D. L. & W. R. R. Co. 823

ARTHUR D. CHAMBERS:

D. L. & W. R. R. Co. (Secretary).
Chester R. R. Co. (Treas. & Secy.)
Erie & Central N. Y. R. R. Co. (Secy. & Treas.)
Green R. R. Co. (Secy. & Treas.).
Hanover & Newport R. R. (Treas.).
Harlem Transfer Co. (Secy. & Treas.).
Hoboken Ferry Co. (Secy. & Treas.).
Morris & Essex R. R. Co. (Secy. & Treas.)
Morris & Essex Extension R. R. Co. (Secy. & Treas.).
Sussex R. R. Co. (Asst. Secy. & Asst. Treas.) 824
Syracuse, Binghamton & N. Y. R. Co. (Asst. Secy. & Asst. Treas.).
Utica, Chenango & Susquehanna Valley R. R. (Asst. Secy. & Asst. Treas.).

THE D. L. & W. COAL CO. DIRECTORATE.

GEORGE F. BAKER, Jr., Director:

Chase National Bank.
First Security Bank.
First National Bank.
C. P. & St. L. Ry. Co.
N. Y. & Long Branch R. R. Co.
Pere Marquette R. R. Co. 825
Quincy, Omaha & K. C. R. R. Co.
Tidewater Oil Co.
Tidewater Pipe Co.

GEORGE BLUMENTHAL of Lazard Freres, 10 Wall St., Director:

D. L. & W. Coal Co.
American Light & Traction Co.
Continental Insurance Co.

826 EDWARD E. LOOMIS, President D. L. & W. Coal Co., Director:

Arnot Water Co. (Pres.).
Babylon Coal Co.
Bangor & Portland Ry. (Pres.)
Chester R. R.
Coal & Iron National Bank.
Edgerton Coal Co.
Erie & Central N. Y. R. R. Co. (V. P.).
Forty Fort Coal Co.
Glen Alden Coal Co.
Green R. R.
Harlem Transfer Co. (V. P.).
827 Hoboken Ferry Co. (V. P.).
Hopatcong R. R. Co.
Lackawanna & Montrose Ry. Co. (V. P.).
Lackawanna R. R. of N. J. (Vice-Pres.).
Lackawanna Valley Coal Co. (V. P.).
Morris & Essex R. R. (V. P.)
Moses Taylor Hospital (Secy. Treas.).
Mont Lookout Coal Co.
Newark & Bloomfield R. R. Co. (V. P.).
N. Y. & Hoboken Ferry Co. (V. P.)
N. Y. Lackawanna & Western Ry. Co.
Northwest Coal Co.
Oswego & Syracuse R. R.
828 Passaic & Delaware R. R. Co.
Passaic & Delaware Extension R. R. Co. (V. P.)
Sterrick Creek Coal Co.
Sussex R. R. Co.
Syracuse & Baldwinsville Ry. Co. (V. P.)
Syracuse, Binghamton & N. Y. R. R. Co. (V. P.)
Utica, Chenango & Susquehanna Valley Ry. (V. P.).
Valley R. R. Co.
Warren R. R. Co.
Wyoming Electric Light & Power Co.

PERCY R. PYNE, 2nd, Director. 829

(Another Pyne in R. R. Co.)
D. L. & W. Coal Co.
Commercial Trust Co. of N. J.
East River Gas Co. of Long Island City.
New Amsterdam Gas Co.
Prospect Co. of N. J. (Pres.).

JAMES A. STILLMAN, Director.

D. L. & W. Coal Co.
Farmers Loan & Trust Co.
National City Bank (V. Pres.).
National City Golf Links of America (Treas.).

HENRY R. TAYLOR, Director. 830

Shenandoah Steel Wire Co. (Pres., Treas.).
South Buffalo Ry. Co.
D. L. & W. Coal Co.

WILLIAM H. TRUESDALE, Director.

Pres. & Director of R. R. Co. See other list.
D. L. & W. Coal Co.

J. J. A. OWENS.

Secretary and Treasurer of the Coal Co.
No record in Directory of Directors or Corporation Directory. 831

New York, November 10, 1913.

832 **Petitioner's Exhibit P17---Second Annual Report of the Delaware, Lackawanna and Western Coal Company, December 31, 1911.**

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY.

BOARD OF DIRECTORS

George F. Baker, Jr. — James A. Stillman
George Blumenthal — Henry R. Taylor
Percy R. Pyne, 2nd — William H. Truesdale
Edward E. Loomis

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833 OFFICERS

E. E. Loomis, President.
D. E. Russell, Vice-President and General Sales Agent.
J. J. A. Owens, Secretary and Treasurer.
Samuel Kerr, Assistant Secretary and Assistant Treasurer.
W. S. Jenney, General Counsel.
J. F. Bermingham, Auditor.

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY

New York, January 31st, 1912

834 The results of this Company's operations for the twelve months ending December 31st, 1911, are shown on the following pages.

E. E. LOOMIS,
President.

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY

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CONDENSED GENERAL BALANCE SHEET

ASSETS	Dec. 31st, 1911	Dec. 31st, 1910	Increase or Decrease
Furniture and Fixtures	$ 11,297.68	$ 11,127.26	$ 170.42
Coal on Hand	2,786,384.59	3,326,394.07	540,009.48
Due from Agents	4,285,432.39	4,379,068.37	93,635.98
Bills Receivable	130,000.00	95,000.00	35,000.00
Accounts Receivable (Sundry)	18,127.18	12,463.36	5,663.82
Cash on Hand and in Banks	5,282,363.62	3,578,515.99	1,703,847.63
	$12,513,605.46	$11,402,569.05	$1,111,036.41

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LIABILITIES			
Capital Stock (issued)	$ 6,590,700.00	$ 6,590,700.00	.....
Accrued Rentals	41,148.78	44,504.34	$ 3,355.56
Accounts Payable	3,049,988.08	3,152,253.93	102,265.85
Reserve (Depreciation, Insurance)	152,999.10	73,179.78	79,819.32
Past Due Dividends	882.50	633.75	248.75
Dividend Payable January 15th	164,767.50	164,767.50	.....
Surplus	2,513,119.50	1,376,529.75	1,136,589.75
	$12,513,605.46	$11,402,569.05	$1,111,036.41

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THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY

PROFIT AND LOSS ACCOUNT.

	Dec. 31st, 1911.	Dec. 31st, 1910.	Increase or Decrease
Coal Sales	$39,865,492.87	$38,668,249.76	$1,197,243.11
Expenses			
Cost of Coal and Transportation	$36,683,320.62	$35,716,405.03	$ 966,915.59
Handling and Sellling	1,285,759.37	1,307,824.55	22,065.18
839 Rental of Trestles, etc.,	138,717.55	129,745.85	8,971.70
Taxes and General Expenses	127,313.43	81,021.41	46,292.02
Total Expenses	$38,235,110.97	$37,234,996.84	$1,000,114.13
Profit from Operation	1,630,381.90	1,433,252.92	197,128.98
Other Income (Interest, etc.)	165,277,85	109,362.86	55,914.99
Net Profit	$ 1,795,659.75	$ 1,542,615.78	$ 253,043.97
840 LESS Dividends	659,079.00	659,070.00	
Added to Surplus	$ 1,136,589.75	$ 883,545.78	$ 253,043.97
Surplus December 31st, 1910	1,376,529.75		
Surplus to General Balance Sheet December 31st, 1911	$ 2,513,119.50		

Petitioner's Exhibit P18.—Extracts from Annual Report D., L. & W. R. R. Co. 1908. 841

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

MANAGERS.

Elected at the annual meeting of Stockholders, February 25th, 1908.

Eugene Higgins.	Hamilton McK. Twombly.
William Rockefeller.	Harris C. Fahnestock.
Henry A. C. Taylor.	Frederick W. Vanderbilt.
J. Rogers Maxwell.	M Taylor Pyne.
George F. Baker.	John D. Rockefeller, Jr.
James Stillman.	William H. Moore. 842
Frank Work.	William Fahnestock.

EXECUTIVE COMMITTEE.

William Rockefeller.	Hamilton McK. Twombly.
George F. Baker.	M. Taylor Pyne.

William H. Truesdale, President.

OFFICERS.

President—William H. Truesdale, New York, N. Y.

Vice-President, in charge of Coal Dept.—E. E. Loomis, New York, N. Y.

Vice-President, in Charge of Traffic Dept.—B. D. Caldwell, New York, N. Y.

Vice-President and General Counsel, in charge of Legal Dept.—William S. Jenney, New York, N. Y. 843

Secretary and Treasurer—Arthur D. Chambers, New York, N. Y.

Assistant Secretary and Assistant Treasurer—R. B. Scofield, New York, N. Y.

General Superintendent—T. E. Clarke, Scranton, Pa.

General Auditor—G. E. Hustis, New York, N. Y.

Freight Traffic Manager—P. J. Flynn, New York, N. Y.

844 General Freight Agent—J. H. Crawford, New York, N. Y.
General Passenger Agent—George A. Cullen, New York, N. Y.
Chief Engineer—L. Bush, Hoboken, N. J.
Supt. Coal Mining Department—R. A. Phillips, Scranton, Pa.
Supt. Motive Power and Equipment—T. S. Lloyd, Scranton, Pa.
Purchasing Agent—Geo. F. Wilson, New York, N. Y.

ANNUAL REPORT

OF

845 THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

For the Year Ending December 31st, 1908.

Revenue:

From Transportation of Coal	$14,558,702.53
From Transportation of Merchandise Freight	9,850,008.20
From Transportation of Passengers	6,449,032.48
From Transportation of Mail	195,885.96
From Transportation of Express	695,282.60
From Transportation of Milk	776,753.83
From Transportation by Ferries	.....
From Miscellaneous Sources	.....
Other Revenue from Transportation	243,254.82
846 Revenue from Operations other than Transportation	129,574.94
Total Revenue	**$32,898,495.36**

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Expenses:		
For Maintenance of Way and Structures		$3,343,395.98
For Maintenance of Equipment		4,747,700.13
For Traffic Expenses		569,398.04
For Transportation Expenses		9,312,644.67
For General Expenses		650,515.97
Total Expenses	56.61%	$18,623,654.79
Net Revenue from Operation	43.39%	$14,274,840.57

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Outside Operations:	
Operating Revenues	$2,725,184.68
Operating Expenses	2,569,286.13
Net Revenue from Outside Operations	$155,898.55
Total Net Revenue	$14,430,739.12
Less Taxes	1,180,800.00
	$13,249,939.12

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850 Add for Additional Income:

Interest on Investments		$ 355,543.00
Coal Department Earnings		4,166,792.50
Dividends on Stocks		467,887.50
Rentals—Miscellaneous		149,519.38
Interest, Discount and Exchange		138,659.17
Miscellaneous Income		88,714.90
Hire of Equipment		296,702.63
Sundry Credits from Adjustment of Suspense Account		16,432.77
		$ 5,680,251.85
851 Total Income		$18,930,190.97

Less Charges:

Rentals of Leased Lines	$ 5,160,139.50
Renewals and Betterments	2,781,603.19
Interest on Bonds	.....
Rentals of New York Terminals	.....
Rentals—Joint Facilities	291,323.19
Sundry Charges from Suspense Account and other Deductions	.....
Total Charges	$ 8,233,065.88
852	$10,697.125.09

Less:

Ten Per Cent. (10%) Dividends on Stock	$ 2,620,000.00
Ten Per Cent. (10%) Extra Dividends paid December 15th	2,620,000.00
	$ 5,240,000.00
Balance Surplus	$ 5,457,125.09

As explained in the President's letter in this report, owing to the changes made in the classification of accounts by the Interstate Commerce Commission, accurate comparison of all items with previous year cannot be shown. 853

TRAFFIC STATISTICS.

Coal Traffic:

Total Tons (Gross) Transported	8,902,733
Number Tons Carried One Mile	1,689,942,333
Average Distance Carried	190 miles
Average Rate Earned per Ton	$1.64 *
Average Rate per Ton per Mile	.00861*

Merchandise Traffic: 854

Total Tons (Net) Transported	8,228,094
Number Tons Carried One Mile	1,391,118,177
Average Distance Carried	169 miles
Average Rate Earned per Ton	$1.197 *
Average Rate per Ton per Mile	.00708*

*Due to the new classification of accounts as required by the Interstate Commerce Commission, these items are not an accurate comparison with previous year.

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COAL DEPARTMENT.

* * * * * * * *

The important question of whether this Company, in common with others similarly situated, may continue to own and operate coal properties, and mine, purchase, transport and sell coal in the future as it has during the past fifty years, although forbidden to do so by the so-called "Commodity Clause" of the Interstate Commerce Law, is now pending before the United States Supreme Court on appeal taken and argued recently from a decree of the U. S. Circuit Court of Appeals, which in a case brought by the Government to test the legality of the Act, confirmed the right of 855

856 the Company to continue its coal business as heretofore. It is confidently expected that the Supreme Court will affirm this decision.

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CONDENSED GENERAL BALANCE SHEET.

December 31st, 1908.

ASSETS.

Cost of Road	$17,903,825.33	
Cost of Equipment	8,019,201.37	
Other Permanent Investments	4,085,169.81	
857		$30,008,196.51
Stocks in Treasury	9,241,183.53	
Bonds in Treasury	9,031,416.96	
		18,272,600.49
Advances to Leased and Controlled Roads	4,100,179.30	
Cash	3,201,457.00	
Coal on Hand	3,302,138.02	
Coal Bills and Sundry Accounts due	3,372,147.10	
Due from Agents and Conductors	502,454.76	
858 Sundry Accounts Receivable	780,325.70	
Material, Fuel and Other Supplies	2,285,864.36	
Bills Receivable	2,151,121.10	
Miscellaneous Accounts	113,612.32	
		19,809,299.66
		$68,090,096.66

LIABILITIES. 859

Capital Stock	$26,200,000.00
Rentals Accrued—not due	1,651,728.66
Past Due Dividends, Interest and Rentals	61,775.99
Del., Lack. & Western Dividend—payable January 20	655,000.00
Audited Vouchers	1,985,330.00
Audited Pay Rolls	1,491,328.34
Accrued Taxes	1,186,726.54
Mortgages on Real Estate	86,073.90
Suspense Account	41,365.65
Replacement of Equipment Reserve	91,771.70
Profit and Loss—Surplus	34,638,995.88
	$68,090,096.66

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INCOME ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1908.

To Operating Expenses		$18,623,654.79
" Outside Operations, Expenses		2,569,286.13
" Coal Department Expenses		35,432,117.26
" Rentals—Joint Facilities—Net		291,323.19
" Taxes		1,180,800.00
" Rentals of Leased Roads:		
Morris & Essex R. R.	$2,774,390.00	
Morris & Essex Exten. R. R.	8,840.00	
Newark & Bloomfield R. R.	6,231.00	
Passaic & Delaware R. R.	5,552.50	
Pass. & Del. Extension R. R.	4,000.00	
863 Warren R. R.	174,790.00	
Valley R. R.	57,500.00	
New York, Lack. & West. Ry.	1,670,000.00	
Cayuga & Susq. R. R.	54,600.00	
Greene R. R.	12,000.00	
Utica, Chen. & Susq. Vy. Ry.	240,000.00	
Oswego & Syracuse R. R.	152,236.00	
		5,160,139.50
" Appropriations for Betterments		2,781,603.19
Balance being net income for the year carried to Profit and Loss Account		10,697,125.09
864		$76,736.049.15

By Revenue from Transportation	$32,768,920.42
" Revenue from Operations other than Trans.	129,574.94
" Revenue from Outside Operations	2,725,184.68
" Coal Sales	38,185,417.44
Coal on hand Dec. 31, 1908—$3,302,138.02	
Less Coal on hand Dec. 31, '07 1,888,645.70	
	1,413,492.32

" Adjustment of Suspense Account.....		16,432.77	865
" Miscellaneous Income from other Sources:			
Dividends on Stock owned...	$467,887.50		
Interest on Bonds owned....	355,543.00		
Interest, Disc't and Exchange	138,659.17		
Hire of Equipment	296,702.63		
Rentals—Miscellaneous	149,519.38		
Miscellaneous Income	88,714.90		
		1,497,026.58	
		$76,736,049.15	866

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1908.

To Dividends: (10% per annum)			
Payable April 20, 1908.....	$655,000.00		
June 25, 1908.....	655,000.00		
Oct. 20, 1908.....	655,000.00		
Jan. 20, 1909.....	655,000.00		
		$2,620,000.00	
Extra Div. payable Dec. 15, 1908, 10%....		2,620,000.00	
To Balance to Credit:			867
December General Balance Sheet.....		34,638,995.88	
		$39,878,995.88	

868 By Balance brought forward from December 31, 1907 ..... $29,181,870.79*
By net income for the year ending December 31, 1908 ..... 10,697,125.09

$39,878,995.88

* * * * * * * *

COAL DEPARTMENT OPERATIONS—SALES AND EARNINGS.

1908.

869

Coal Sales:	Tons.		
At Mines	101,057	$234,772.95	
Company's Supply ..	1,377,708	1,351,488.93	
Local Agencies	5,789,685	21,725,883.70	
Foreign Agencies ...	2,341,677	14,873,271.86	
Total Sales	9,610,127		$38,185,417.44
Barge Earnings, Company's Boats	.....	.....	.....
Total Sales and Earnings	9,610,127	.....	$38,185,417.44
Coal on hand December 31st	1,294,321	.....	3,302,138.02
870			$41,487,555.46

*This balance was shown in previous annual report as $29,244,911.66. The difference of $63,040.87 is due to adjustment of the balance of sundry accounts between the old and new accounting methods covering the period between July 1st, 1907—the date on which the new system became effective—and December 31st, 1907. Between these dates the accounts were kept on both the old and new basis. The last annual report was made up on the old basis, the permanent records of the Company were kept on the new one to conform to requirements of the Interstate Commerce Commission

1907. 871

Tons.		
106,865	$271,640.90	.....
1,672,237	1,762,475.55	.....
6,199,942	22,796,731.11	.....
2,405,147	15,219,755.62	.....
10,384,191		$40,050,603.18
975,901	.....	245,686.40
10,384,191	.....	$40,296,289.58
590,089	.....	1,888,645.70
		$42,184,935.28

872

COST AND EXPENSES.

1908.

	Tons.		
Cost of Coal Mined and Purchased	10,314,359	.....	$17,063,059.23
Transportation:			
On D., L. & W. Lines	8,388,315	$14,318,780.77	.....
On Other Lines	2,745,807	2,014,737.77	.....
Total			16,333,518.54
Handling, Selling, &c.			
Handling, Local and Foreign Agencies..	7,933,179	$839,932.33	.....
Commissions	2,234,139	436,689.13	.....
General Expenses		115,590.32	.....
Total			1,392,211.78
Vessel Expenses		.....	.....
Improvements		.....	252,827.71
Taxes		.....	390,500.00

873

874

Total Cost and Expenses	.....	.....	$35,432,117.26
Profit	.....	.....	4,166,792.50
Coal on hand January 1st	590,089	.....	1,888,645.70
			$41,487,555.46

1907.

Tons.		
10,371,341	.....	$16,752,181.10
8,577,354	$14,460,328.99	.....
2,506,473	1,970,832.36	.....

875

		16,431,161.35
8,388,980	$942,891.22	.....
2,282,831	439,508.01	.....
.....	151,729.48	.....
		1,534,128.71
.....	.....	218,816.15
.....	.....	783,912.18
.....	.....	425,600.00
		$36,145,799.49
.....	.....	4,224,920.69

876

602,939	.....	1,814,215.10
		$42,184,935.28

Petitioner's Exhibit P19.—Extracts from Annual Report of the Delaware, Lackawanna & Western Railroad Company for the Year Ending December 31, 1909. 877

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

MANAGERS.

Elected at the annual meeting of Stockholders,

February 23rd, 1909.

Eugene Higgins.	Hamilton McK. Twombly.
William Rockefeller.	Harris C. Fahnestock. 878
Henry A. C. Taylor.	Frederick W. Vanderbilt.
J. Rogers Maxwell.	M. Taylor Pyne.
George F. Baker.	John D. Rockefeller, Jr.
James Stillman.	William H. Moore.
Frank Work.	William Fahnestock.

EXECUTIVE COMMITTEE.

William Rockefeller.	Hamilton McK. Twombly.
George F. Baker.	M. Taylor Pyne.

William H. Truesdale, President.

OFFICERS. 879

President—William H. Truesdale, New York, N. Y.

Vice-President—Edward E. Loomis, New York, N. Y.

Vice-President in Charge Traffic Dept.—B. D. Caldwell, New York, N. Y.

Vice-President and General Counsel, in charge of Legal Dept.—William S. Jenney, New York, N. Y.

Secretary and Treasurer—Arthur D. Chambers, New York, N. Y.

880 Assistant Secretary and Assistant Treasurer—R. B. Scofield, New York, N. Y.

General Superintendent—T. E. Clarke, Scranton, Pa.

General Auditor, G. E. Hustis, New York, N. Y.

Freight Traffic Manager—P. J. Flynn, New York, N. Y.

Assistant Freight Traffic Manager—J. H. Crawford, New York, N. Y.

General Freight Agent—Nat. Duke, New York, N. Y.

General Passenger Agent—George A. Cullen, New York, N. Y.

Supt. Motive Power and Equipment—T. S. Lloyd, Scranton, Pa.

Chief Engineer—George J. Ray, Hoboken, N. J.

881 Supt. Coal Mining Department—R. A. Phillips, Scranton, Pa.

Purchasing Agent—Geo. F. Wilson, New York, N. Y.

ANNUAL REPORT OF THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

For the Year Ending December 31st, 1909.

Revenue:	
From Transportation of Coal	$14,464,221.02
From Transportation of Merchandise Freight	11,393,859.98
882 From Transportation of Passengers	6,825,430.08
From Transportation of Mail	191,668.31
From Transportation of Express	711,812.45
From Transportation of Milk	795,912.77
Other Revenue from Transportation	303,801.36
Revenue from Operations other than Transportation	128,304.74
Total Revenue	$34,815,010.71

Expenses:			883
For Maintenance of Way and Structures		$ 3,298,389.45	
For Maintenance of Equipment		4,797,073.26	
For Traffic Expenses		651,887.57	
For Transportation Expenses		9,340,845.40	
For General Expenses		657,313.77	
Total Expenses	53.84%	$18,745,509.45	
Net Revenue from Operation	46.16%	$16,069,501.26	
Outside Operations:			
Operating Revenues		$ 2,778,869.89	
Operating Expenses		2,414,184.59	884
Net Revenue from Outside Operations		$ 364,685.30	
Total Net Revenue		$16,434,186.56	
Less Taxes		1,394,500.00	
		$15,039,686.56	
Add for Additional Income:			
Interest on Investments		$ 391,029.93	
Coal Department Earnings		4,628,770.54	
Dividends on Stocks		394,529.50	
Rentals—Miscellaneous		154,699.95	
Interest, Discount and Exchange		45,908.66	885
Miscellaneous Income		559.88	
Hire of Equipment		175,141.37	
Sundry Additions and Deductions		*2,544,194.39	
Bangor & Portland Ry. and Hanover & Newport R. R. (Merger)		139,074.35	
		$ 8,473,908.57	
Total Income		$23,513,595.13	

*This item includes profit from sale of 37,000 shares Lehigh Valley R. R. Stock $2,622,739.06.

886

Less Charges:	
Rentals of Leased Lines	$ 5,160,139.50
Renewals and Betterments	2,099,454.42
Interest on Bonds	3,243.00
Rentals—Joint Facilities	271,562.93
Total Charges	$ 7,534,399.85
	$15,979,195.28
†Less:	
Ten Per Cent. (10%) Dividends on Stock	$ 2,817,216.25
Ten Per Cent. (10%) Extra Dividend paid December 22	3,014,370.00
	$ 5,831,586.25
Balance Surplus	$10,147,609.03

887

TRAFFIC STATISTICS.

Coal Traffic:	
Total Tons (Gross) Transported	9,034,048
Number Tons Carried One Mile	1,679,244,282
Average Distance Carried	186 miles
Average Rate Earned per Ton	$1.60
Average Rate per Ton per Mile	.00861

888

Merchandise Traffic:	
Total Tons (Net) Transported	10,273,000
Number Tons Carried One Mile	1,627,302,423
Average Distance Carried	158 miles
Average Rate Earned per Ton	$1.109
Average Rate per Ton per Mile	.00700

†For 50% and 15% Dividends, see Profit and Loss Account.

All Freight Traffic:	
Miles Run by Freight Trains	6,739,495
Earnings per Freight Train Mile	$3.84
Average Train Load; Revenue Freight Tons (Net)	520.53 tons
Passenger Traffic:	
Total Number of Passengers Carried	25,915,267
Number Passengers Carried One Mile	492,757,937
Average Distance Carried	19 miles
Average Receipts per Passenger	$.2634
Average Rate per Passenger per Mile	.01385
Miles Run by Passenger Trains	5,751,589
Earnings per Passenger Service Train Mile	$1.49

889

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COAL MINING DEPARTMENT.

In conformance with the decision rendered by the United States Supreme Court that railroad companies cannot lawfully transport in interstate commerce coal owned by themselves, the sales division of the Coal Department of the D., L. & W. Railroad was discontinued August 1st, 1909, and a coal selling company was organized under the laws of the State of New Jersey. Therefore, the annual report of the Coal Department covers but seven months—from January to July, inclusive—of the sales end of the business. A contract was entered into with the new Coal Company, whereby the railroad agreed to sell its coal on board cars at the mines on the same basis as generally prevails in the anthracite region, or what is known as the 65% basis of Tidewater prices; and also to sell and turn over all stocks of coal along its lines and on western docks, and to lease its trestles, to the Coal Company.

891

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FINANCIAL.

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In rearranging its affairs in conformance with the decision of the United States Supreme Court in what is known as the Commodities Case, the Company declared

892 an extra dividend of 50%, which was payable in cash, the stockholders, however, being given the option to use one-half of this extra dividend in purchasing stock of the Delaware, Lackawanna & Western Coal Company, which was organized and took over the merchandising of this Company's coal on August 1st, 1909. At the same time a stock dividend of 15% was declared and paid to the stockholders of the Company. As a result its capital stock was increased to $30,277,000.00

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CONDENSED GENERAL BALANCE SHEET.
December 31st, 1909.

ASSETS.

893

Cost of Road	$19,463,949.10	
Cost of Equipment	8,019,201.37	
Other Permanent Investments	5,294,861.49	
		$32,778,011.87
Stocks in Treasury	11,677,843.20	
Bonds in Treasury	9,993,854.89	
		21,671,698.09
Advances to Leased and Controlled Roads	3,868,283.52	
Cash	1,565,877.73	
894 Coal on Hand	130,052.18	
Coal Bills and Sundry Accounts Due	1,929,722.14	
Due from Agents and Conductors	533,930.81	
Sundry Accounts Receivable	2,076,361.62	
Material, Fuel and Other Supplies	2,144,435.85	
Bills Receivable	14,148.22	
Miscellaneous Accounts	209,668.02	
		12,472,480.09
		$66,922,190.05

LIABILITIES. 895

Capital Stock		$30,277,000.00
Premiums Realized on Capital Stock Sold		70,479.00
Bangor & Portland Ry.—1st Mortgage Bonds of 1930	$150,000.00	
Bangor & Portland Ry.—2nd Mortgage Bonds of 1932	100,000.00	
Bangor & Portlandt Ry.—Mortgage Bonds of 1936	70,000.00	
		320,000.00
Rentals Accrued—not due		1,643,664.66
Past Due Dividends, Interest and Rentals		40,722.32
Del., Lack. & Western Dividend—payable January 20		753,597.50
Audited Vouchers		1,914,596.85
Audited Pay Rolls		1,534,345.59
Accrued Taxes		1,382,459.39
Mortgages on Real Estate		86,073.09
Notes Payable		1,000,000.00
Suspense Account		33,787.72
Replacement of Equipment Reserve		108,867.30
Profit and Loss—Surplus		27,756,604.91
		$66,922,190.05

896

897

898

INCOME ACCOUNT FOR THE YEAR ENDING DECEMBER 31ST, 1909.

To Operating Expenses		$18,745,509.45
" Outside Operations Expenses		2,414,184.59
" Coal Mining Expenses		27,734,956.79
" Rentals—Joint Facilities		271,562.93
" Taxes		1,394,509.00
" Interest on Bonds		3,243.00
" Rentals of Leased Roads:		
Morris & Essex R. R.	$2,774,390.00	
Morris & Essex Exten. R. R.	8,840.00	
Newark & Bloomfield R. R.	6,231.00	
899 Passaic & Delaware R. R.	5,552.50	
Pass. & Del. Extension R. R.	4,000.00	
Warren R. R.	174,790.00	
Valley R. R.	57,500.00	
New York, Lack. & West. Ry.	1,670,000.00	
Cayuga & Susq. R. R.	54,600.00	
Greene R. R.	12,000.00	
Utica, Chen. & Susq. Vy. Ry.	240,000.00	
Oswego & Syracuse R. R.	152,236.00	
		5,160,139.50
Coal on Hand Dec. 31, 1908	3,302,138.02	
Less Coal on Hand Dec. 31, 1909	130,052.18	
900		3,172,085.84
To Appropriations for Betterments		2,099,454.42
Balance being net income for the year carried to Profit and Loss Account		15,979,195.28
		$76,974,831.80
By Revenue from Transportation		$34,686,705.97

" Revenue from Operations other than Transp.		128,304.74	901
" Revenue from Outside Operations		2,778,869.89	
" Coal Sales		35,535,813.17	
" Sundry Additions and Deductions		2,544,194.39	
" Bangor & Portland Ry and Hanover & Newport R. R. (Merger)		139,074.35	
" Miscellaneous Income from other Sources:			
Dividends on Stock owned	$394,529.50		
Interest on Bonds owned	391,029.93		
Interest, Disc't and Exchange	45,908.66		
Hire of Equipment	175,141.37		
Rentals—Miscellaneous	154,699.95		902
Miscellaneous Income	559.88		
		1,161,869.29	
		$76,974,831.80	

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1909.

To Dividends: (10%) per annum			
Payable April 20, 1909 "	$655,000.00		
" July 20, 1909 "	655,000.00		903
" Oct. 20, 1909 "	753,618.75		
" Jan. 20, 1910 "	753,597.50		
		$2,817,216.25	
Extra Div. payable July 20, 1909, 50%		13,100,000.00	
" " " Aug. 2, 1909, 15%		3,930,000.00	
" " " Dec. 22, 1909, 10%		3,014,370.00	
To Balance to Credit:			
December General Balance Sheet		27,756,604.91	
		$50,618,191.16	

904	By Balance brought forward from December 31, 1908	$34,638,995.88
	By net income for the year ending December 31, 1909	15,979,195.28
		$50,618,191 16

COAL DEPARTMENT OPERATIONS—SALES AND EARNINGS.

1909.

	Coal Sales:	Tons.		
905	At Mines	85,616	$ 257,687.75	
	Company's Supply	1,259,315	1,301,680.10	
	Local Agencies	3,652,607	13,818,731.13	
	Foreign Agencies	1,254,674	7,900,424.59	
	D., L. & W. Coal Co.	4,313,694	12,241,262.59	
	Total Sales	10,565,906		$35,519,786.16
	Coal land rents			16,027.01
	Total Sales and Earnings	10,565,906		$35,535,813.17
906	Coal on hand December 31st	372,724		130,052.18
				$35,665,865.35

COSTS AND EXPENSES. 907

1909.

	Tons		
Cost of Coal Mined, Washed and Purchased	9,644,309		$16,581,893.48
Transportation:			
On D., L. W. & Lines	4,919,728	$8,277,927.28	
On Other Lines	1,402,298	1,152,173.57	
Total			9,430,100.85
Handling, Selling, &c.			908
Handling, Local and Foreign Agencies	4,798,819	$ 466,447.03	
Commissions	1,288,131	257,695.74	
General Expenses		122,761.08	
Total			846,903.85
Improvements			509,058.61
Taxes			367,000.00
Total Cost and Expenses			$27,734,956.79
Profit			4,628,770.54
Coal on hand January 1st	1,294,321		3,302,138.02 909
			$35,665,865.35

910 **Petitioner's Exhibit P20.—Extracts from Annual Report of the Delaware, Lackawanna & Western Railroad Company for the Year Ending December 31st, 1910.**

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

MANAGERS.

Elected at the annual meeting of stockholders, February 23rd, 1910.

911

Eugene Higgins.	Harris C. Fahnestock.
William Rockefeller.	Frederick W. Vanderbilt.
Henry A. C. Taylor.	M. Taylor Pyne.
J. Rogers Maxwell (Deceased Dec. 11, 1910).	John D. Rockefeller, Jr.
George F. Baker.	William H. Moore.
James Stillman.	William Fahnestock.
Frank Work.	Geo. F. Baker, Jr.

EXECUTIVE COMMITTEE.

William Rockefeller. George F. Baker.

M. Taylor Pyne.

912 William H. Truesdale, President.

OFFICERS.

President—William H. Truesdale, New York, N. Y.

Vice-President—Edward E. Loomis, New York, N. Y.

Vice-President, in Charge of Traffic Dept.—B. D. Caldwell, New York, N. Y.

Vice-President and General Counsel, in charge of Legal Dept.—William S. Jenney, New York, N. Y.

Secretary and Treasurer—Arthur D. Chambers, New York, N. Y.

Assistant Secretary and Assistant Treasurer—R. B. Scofield, New York, N. Y. 913

General Superintendent—T. E. Clarke, Scranton, Pa.

Assistant General Superintendent—E. M. Rine, Scranton, Pa.

General Auditor—G. E. Hustis, New York, N. Y.

Freight Traffic Manager—P. J. Flynn, New York, N. Y.

Assistant Freight Traffic Manager—J. H. Crawford, New York, N. Y.

General Freight Agent—Nat. Duke, New York, N. Y.

General Passenger Agent—George A. Cullen, New York, N. Y.

Supt. Motive Power and Equipment—T. S. Lloyd, Scranton, Pa. 914

Chief Engineer—George J. Ray, Hoboken, N. J.

Supt. Coal Mining Department—R. A. Phillips, Scranton, Pa.

Purchasing Agent—C. C. Hubbell, New York, N. Y.

ANNUAL REPORT

OF

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

For the Year Ending December 31st, 1910.

Revenue:	1910.
From Transportation of Coal	$14,067,77.88
From Transportation of Merchandise Freight	12,443,473.35
From Transportation of Passengers	7,290,943.05
From Transportation of Mail	186,911.14
From Transportation of Express	691,383.05
From Transportation of Milk	853,701.60
Other Revenue from Transportation	335,449.44
Revenue from Operations other than Transportation	183,292.63
Total Revenue	$36,052,932.14

915

916	Expenses:		
	For Maintenance of Way and Structures		$ 3,804,931.54
	For Maintenance of Equipment		5,034,604.84
	For Traffic Expenses		716,347.08
	For Transportation Expenses		10,379,455.26
	For General Expenses		688,109.71
	Total Expenses	57.20%	$20,623,448.43
	Net Revenue from Operation	42.80%	$15,429,483.71
917	Outside Operations:		
	Operating Revenues		$ 3,036,747.35
	Operating Expenses		2,825.991.51
	Net Revenue from Outside Operations		$ 210,755.84
	Total Net Revenue		$15,640,239.55
	Less Taxes		1,518,924.55
			$14,121,315.00
	Add for Additional Income:		
918	Interest on Investments		$ 405,817.54
	Coal Department Earnings		3,381,262.33
	Dividends on Stocks		240,164.88
	Rentals—Miscellaneous		185,581.83
	Interest, Discount and Exchange		19,756.07
	Miscellaneous Income		268.79
	Hire of Equipment		201,558.51
	Sundry Additions and Deductions		113,585.74
	Bangor & Portland Ry. and Hanover & Newport R. R. (Merger)		.....
			$ 4,547,995.69
	Total Income		$18,669.310.69

Less Charges:		919
Rentals of Leased Roads	$ 5,160,139.50	
Renewals and Betterments	2,542,117.13	
Interest on Bonds	6,486.00	
Rentals—Joint Facilities	238,583.84	
Total Charges	$ 7,947,326.47	
	$10,721,984.22	
Less:		
Ten Per Cent. (10%) Dividends on Stock	$ 3,014,400.00	
Ten Per Cent. (10%) Extra Dividend paid December 22	3,014,400.00	920
	$ 6,028,800.00	
Balance Surplus	$ 4,693,184.22	

TRAFFIC STATISTICS

FOR THE YEAR ENDING DECEMBER 31ST, 1910.

* * * * * * *

Coal Traffic:		
Total Tons (Gross) Transported	8,921,033	
Number Tons Carried One Mile	1,681,100,221	921
Average Distance Carried	188 miles	
Average Rate Earned per Ton	$1.58	
Average Rate per Ton per Mile	.00837	
Merchandise Traffic:		
Total Tons (Net) Transported	11,758,953	
Number Tons Carried One Mile	1,788,021,198	
Average Distance Carried	152 miles	
Average Rate Earned per Ton	$1.058	
Average Rate per Ton per Mile	.00696	

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922

COAL MINING DEPARTMENT.

The net income to the Company from the operation of its Coal Mining Department during the past year shows a reduction of $1,247,508.21 from that of the preceding year.

It will be remembered that on August 1st, 1909, the marketing of this Company's anthracite coal at different points of distribution and consumption was turned over to the D., L. & W. Coal Company. This transaction was explained in detail in the Company's last annual report.

For the first seven months of 1909, therefore, the profit to this Company from the sales of its coal, as formerly, formed a portion of its net earnings; also, with the con-
923 summation of the arrangement above referred to, the coal this Company had on hand at various storage and distribution points was turned over to the new Coal Company at prices on a higher basis than same was carried on the books of the Company. The extra profits from this transaction were also included in this Company's Coal Department earnings for the year 1909. The difference, therefore, in the results of the two years is fully accounted for by these transactions. When this is taken into consideration, the results this year show as favorably as in any previous year.

The mining operations of the Company have resulted in producing about 373,000 tons more coal than during the
924 preceding year. The Company's washeries produced about 102,000 tons less, and the purchases of coal from independent companies were about 195,000 tons less, so that the total amount produced and purchased aggregated 9,720,198 tons, as compared with 9,644,309 tons during the preceding year.

* * * * * * * *

CONDENSED GENERAL BALANCE SHEET. 925

DECEMBER 31ST, 1910.

ASSETS.

Cost of Road	$19,680,285.94		
Cost of Equipment	8,019,201.37		
Other Permanent Investments	5,910,619.56		
		$33,610,106.87	
Stocks in Treasury	15,157,678.20		
Bonds in Treasury	11,416,925.74		
		26,574,603.94	926
Replacement of Equipment	491,019.84		
Advances to Leased and Controlled Roads	2,594,055.58		
Cash	779,115.39		
Coal on Hand	78,073.13		
Coal Bills and Sundry Accounts due	1,863,562.71		
Due from Agents and Conductors	440,608.79		
Sundry Accounts Receivable	1,960,740.52		
Material, Fuel and Other Supplies	2,850,715.87		
Bills Receivable	23,931.35		
Miscellaneous Accounts	144,328.70		927
		11,226,151.88	
		$71,410,862.69	

928

LIABILITIES.

Capital Stock		$30,277,000.00
Premiums Realized on Capital Stock Sold		70,720.00
Bangor & Portland Ry.— 1st Mortgage Bonds of 1930	$150,000.00	
Bangor & Portland Ry.—2nd Mortgage Bonds of 1932	100,000.00	
Bangor & Portland Ry.—Mortgage Bonds of 1936	70,000.00	
		320,000.00
929 Rentals Accrued—not due		1,652,417.16
Past Due Dividends, Interest and Rentals		26,792.32
Del., Lack. & Western Dividend —payable January 20		753,600.00
Audited Vouchers		1,850,730.87
Audited Pay Rolls		1,536,633.31
Accrued Taxes		1,443,677.61
Mortgages on Real Estate		26,666.66
Notes Payable		1,000,000.00
Suspense Account		2,835.63
Profit and Loss—Surplus		32,449,789.13
930		$71,410,862.69

INCOME ACCOUNT FOR THE YEAR ENDING DECEMBER 31ST, 1910. 931

To Operating Expenses		$20,623,448.43	
" Outside Operating Expenses		2,825,991.51	
" Coal Mining Expenses		18,274,812.86	
" Rentals—Joint Facilities		238,583.84	
" Taxes		1,518,924.55	
" Interest on Bonds		6,486.00	
" Rentals of Leased Roads:			
Morris & Essex R. R.	$2,774,390.00		
Morris & Essex Exten. R. R.	8,840.00		
Newark & Bloomfield R. R.	6,231.00		
Passaic & Delaware R. R.	5,552.50		932
Pass. & Del. Extension R. R.	4,000.00		
Warren R. R.	174,790.00		
Valley R. R.	57,500.00		
New York, Lack. & West. Ry.	1,670,000.00		
Cayuga & Susq. R. R.	54,600.00		
Greene R. R.	12,000.00		
Utica, Chen. & Susq. Vy. Ry.	240,000.00		
Oswego & Syracuse R. R.	152,236.00		
		5,160,139.50	
Coal on Hand Dec. 31, 1909	130,052.18		
Less Coal on Hand Dec. 31, 1910	78,073.13		933
		51,979.05	
To Appropriations for Betterments		2,542,117.13	
Balance being net income for the year carried to Profit and Loss Account		10,721,984.22	
		$61,964,467.09	

934	By Revenue from Transportation		$35,869,639.51
	" Revenue from Operations other than Transportation		183,292.63
	" Revenue from Outside Operations		3,036,747.35
	" Coal Sales		21,708,054.24
	" Sundry Additions and Deductions		113,585.74
	" Miscellaneous Income from other Sources:		
	Dividends on Stock owned	$240,164.88	
	Interest on Bonds owned	405,817.54	
	Interest, Disc't and Exchange	19,756.07	
	Hire of Equipment	201,558.51	
	Rentals—Miscellaneous	185,581.83	
935	Miscellaneous Income	268.79	
			1,053,147.62
			$61,964,467.09

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING DECEMBER 31ST, 1910.

	To Dividends (10% per annum):		
	Payable April 20, 1910	$753,600.00	
	" July 20, 1910	753,600.00	
	" Oct. 20, 1910	753,600.00	
	" Jan. 20, 1911	753,600.00	
936			$3,014,400.00
	Extra 10% payable Dec. 22, 1910		3,014,400.00
	To balance to Credit:		
	December General Balance Sheet		32,449,789.13
			$38,478,589.13
	By Balance brought forward from December 31, 1909		$27,756,604.91
	By net income for the year ending December 31, 1910		10,721,984.22
			$38,478,589.13

COAL DEPARTMENT OPERATIONS—SALES AND EARNINGS. 937

1910.

Coal Sales:	Tons.		
At Mines	80,298	$ 240,822.87	
Company's Supply	1,401,011	1,548,420.55	
Local Agencies	.....	.....	
Foreign Agencies	.....	.....	
D., L. & W. Coal Co.	8,435,528	19,888,582.27	
Total Sales	9,916,837		$21,677,825.69
Coal land rents	.....	.....	30,228.55 938
Total Sales and Earnings	9,916,837	.....	$21,708,054.24
Coal on hand December 31st	176,085	.....	78,073.13
			$21,786,127.37

939

940 COST AND EXPENSES.

1910.

	Tons.		
Cost of Coal Mined, Washed and Purchased	9,720,198	.....	$16,947,964.68
Transportation:			
On D., L. & W. Lines			
On Other Lines			
Total			
941 Handling, Selling, &c.			
Local Handling—Scranton		$ 44,345.07	
Local and Foreign Agencies			
Commissions			
General Expenses		127,142.86	
Total			171,487.93
Improvements			675,195.06
Taxes			480,165.19
Total Cost and Expenses	9,720,198	.....	$18,274,812.86
942 Profit			3,381,262.33
Coal on hand January 1st	372,724	.....	130,052.18
			$21,786,127.37

Petitioner's Exhibit P21.—Extracts from Annual Report of The Delaware, Lackawanna & Western Railroad Company for the Year Ending December 31st, 1911. 943

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

MANAGERS.

Elected at the annual meeting of Stockholders, February 21st, 1911.

William Rockefeller.
Henry A. C. Taylor.
George F. Baker.
James Stillman.
Frank Work (Deceased March 16, 1911).
Harris C. Fahnestock.
Frederick W. Vanderbilt.
M. Taylor Pyne.
John D. Rockefeller, Jr.
William H. Moore. 944
William Fahnestock.
Geo. F. Baker, Jr.
William H. Truesdale.
S. S. Palmer.
John F. Talmage.

EXECUTIVE COMMITTEE:

William Rockefeller. George F. Baker.
M. Taylor Pyne.
William H. Truesdale, President.

OFFICERS.

President—William H. Truesdale, New York, N. Y. 945
Vice-President—Edward E. Loomis, New York, N. Y.
Vice-President, in Charge of Traffic Dept.—P. J. Flynn, New York, N. Y.
Vice-President and General Counsel, in charge of Legal Dept.—William S. Jenney, New York, N. Y.
Secretary and Treasurer—Arthur D. Chambers, New York, N. Y.
Assistant Secretary and Assistant Treasurer—R. B. Scofield, New York, N. Y.

946 General Superintendent—T. E. Clarke, Scranton, Pa.

Assistant General Superintendent—E. M. Rine, Scranton, Pa.

General Auditor—G. E. Hustis, New York, N. Y.

Freight Traffic Manager—J. H. Crawford, New York, N. Y.

Assistant Freight Traffic Manager—Nat. Duke, New York, N. Y.

General Freight Agent—A. S. Learoyd, New York, N. Y.

Passenger Traffic Manager—George A. Cullen, New York, N. Y.

Superintendent Motive Power and Equipment—H. C. Manchester, Scranton, Pa.

947 Chief Engineer—George J. Ray, Hoboken, N. J.

Superintendent Coal Mining Department—R. A. Phillips, Scranton, Pa.

Purchasing Agent—C. C. Hubbell, New York, N. Y.

Annual Report

of

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

For the Year Ending December 31st, 1911.

	1911.
Revenue:	
948 From Transportation of Coal	$14,096,724.93
From Transportation of Merchandise Freight	12,462,679.49
From Transportation of Passengers	7,696,800.39
From Transportation of Mail	185,059.09
From Transportation of Express	745,920.54
From Transportation of Milk	886,425.84
Other Revenue from Transportation	335,762.35
Revenue from Operations other than Transportation	177,190.89
Total Revenue	$36,586,563.52

Expenses:		949
For Maintenance of Way and Structures	$4,144,939.87	
For Maintenance of Equipment	5,762,902.86	
For Traffic Expenses	779,489.07	
For Transportation Expenses	10,864,107.26	
For General Expenses	767,213.24	
Total Expenses—61.00%	$22,318,652.30	
Net Revenue from Operation—39.00%	$14,267,911.22	
Outside Operations:		
Operating Revenues	$3,143,097.71	
Operating Expenses	2,734,392.71	950
Net Revenue from Outside Operations	$408,705.00	
Total Net Revenue	$14,676,616.22	
Less Taxes	1,834,640.00	
	$12,841,976.22	
Add for Additional Income:		
Interest on Investments	$446,684.67	
Coal Department Earnings	3,490,084.58	
Dividends on Stocks	226,661.25	
Rentals—Miscellaneous	199,508.94	951
Interest, Discount and Exchange	6,398.57	
Miscellaneous Income	225.86	
Hire of Equipment	239,013.90	
Sundry Additions and Deductions	.....	
	$4,595,780.63	
Total Income	$17,437,756.85	

952

Less Charges:	
Rentals of Leased Roads	$ 5,204,889.50
Renewals and Betterments	2,200,627.56
Interest on Bonds	6,486.00
Rentals—Joint Facilities	224,042.58
Sundry Additions and Deductions	7,527.11
Discount on Bonds Sold	162,142.02
Total Charges	$7,805,714.77
	$9,632,042.08
Less:	
953 Ten Per Cent. (10%) Dividends on Stock	$3,014,400.00
Ten Per Cent. (10%) Extra Dividend Paid December 22	3,014,400.00
	$6,028,800.00
Balance, Surplus	$3,603,242.08

TRAFFIC STATISTICS

For the Year Ending December 31st, 1911.

	1911.
Coal Traffic:	
Total Tons (Gross) Transported	8,864,419
954 Number Tons Carried One Mile	1,687,831,181
Average Distance Carried	190 miles
Average Rate Earned per Ton	$1.59
Average Rate per Ton per Mile	.00835
Merchandise Traffic:	
Total Tons (Net) Transported	11,804,105
Number Tons Carried One Mile	1,842,778,235
Average Distance Carried	156 miles
Average Rate Earned per Ton	$1.056
Average Rate per Ton per Mile	.00676

EARNINGS. 955

* * * * * * * *

While the tonnage of anthracite coal handled was less than in the previous year, the earnings on same were slightly more, due to the average haul on each ton of coal being longer and the earnings per ton handled slightly greater than in the previous year.

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COAL MINING DEPARTMENT.

The net income from the operations of this department during the past year was $3,490,084.58, or $108,822.25 more than for the year 1910.

The Company's mining properties have been fully maintained and good progress has been made in opening up a new colliery (The Loomis), the sum of $148,479.52 having been expended in sinking shafts and on other development work in connection therewith. 956

On page 20 will be found a statement showing in detail the extraordinary expenditures made during the year on the various coal properties of the Company, aggregating the sum of $747,265.59. From this it will be seen that much important work was done and many new appliances provided that have improved the condition and efficiency of this important branch of the Company's activities.

The tonnage produced from the collieries and washeries owned by the Company was 8,445,684 tons, or 367,581 tons more than in 1910. The coal purchased from other companies during the year was 1,579,482 tons, or 62,613 tons less than in 1910. The total produced and purchased during the year was 10,025,166 tons. 957

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958

CONDENSED GENERAL BALANCE SHEET.

December 31st, 1911.

ASSETS.

Cost of Road	$19,916,564.84	
Cost of Equipment	8,019,201.37	
Other Permanent Investments	4,578,308.47	
		$32,514,074.68
Stocks in Treasury	$9,028,975.70	
Bonds in Treasury	10,412,993.88	
		19,441,969.58
959		
Replacement of Equipment	$912,669.70	
Advances to Leased and Controlled Roads	3,169,302.26	
Cash	482,761.29	
Coal on Hand	87,073.10	
Coal Bills and Sundry Accounts due	1,813,559.19	
Due from Agents and Conductors	495,201.52	
Sundry Accounts Receivable	1,846,567.24	
Material, Fuel and Other Supplies	3,066,515.39	
Bills Receivable	16,517.88	
960 Suspense Account	47,493.58	
Miscellaneous Accounts	103,326.97	
		12,040,988.12
		$63,997,032.38

LIABILITIES. 961

Capital Stock		$30,277,000.00
Premiums Realized on Capital Stock		70,720.00
Bangor & Portland Ry.—1st Mortgage Bonds of 1930	$150,000.00	
Bangor & Portland Ry.—2nd Mortgage Bonds of 1932	100,000.00	
Bangor & Portland Ry.— Mortgage Bonds of 1936	70,000.00	
		320,000.00
Rentals Accrued—not due		1,644,790.41
Past Due Dividends, Interest and Rentals		130,307.32
Delaware, Lackawanna & Western Dividend —payable January 20th		962
Audited Vouchers		753,600.00
Audited Pay Rolls		2,106,406.65
Accrued Taxes		1,359,663.00
Mortgages on Real Estate		1,805,247.13
Profit and Loss—Surplus		26,666.66
		25,502,631.21
		$63,997,032.38

963

964 INCOME ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1911.

To Operating Expenses			$22,318,652.30
" Outside Operations Expenses			2,734,392.71
" Coal Mining Expenses			19,025,129.81
" Rentals—Joint Facilities			224,042.58
" Taxes			1,834,640.00
" Interest on Bonds			6,486.00
" Discount on Bonds Sold			162,142.02
" Interest, Discount & Exchange			6,398.57
" Sundry Additions & Deductions			7,527.11
" Rentals of Leased Roads:			
965 Morris & Essex R. R.	$2,827,473.33		
Morris & Essex Exten. R. R.	8,840.00		
Newark & Bloomfield R. R.	6,231.00		
Passaic & Delaware R. R.	5,552.50		
Pass. & Del. Extension R. R.	4,000.00		
Warren R. R.	174,790.00		
Valley R. R.	49,166.67		
New York, Lack. & West. Ry.	1,670,000.00		
Cayuga & Susq. R. R.	54,600.00		
Greene R. R.	12,000.00		
Utica, Chen. & Susq. Vy. Ry.	240,000.00		
Oswego & Syracuse R. R.	152,236.00		
			5,204,889.50
966 To Appropriations for Betterments			2,200,627.56
Balance, being net income for the year carried to Profit and Loss Account			9,632,042.08
			$63,356,970.24

By Revenue from Transportation		$36,409,372.63	967
" Revenue from Operations other than Trans.		177,190.89	
" Revenue from Outside Operations		3,143,097.71	
" Coal Sales		22,499,579.37	
" Coal Land Rents		6,635.05	
" Miscellaneous Income from other sources:			
Dividends on Stocks owned	$226,661.25		
Interest on Bonds owned	446,684.67		
Hire of Equipment	239,013.90		
Rentals—Miscellaneous	199,508.94		
Miscellaneous Income	225.86		
		1,112,094.62	968
Coal on Hand Dec. 31, 1911	$87,073.10		
Less Coal on Hand Dec. 31, 1910	78,073.13		
		8,999.97	
		$63,356,970.24	

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1911.

To Dividends: (10% per annum)			
Payable April 20, 1911	$753,600.00		
" July 20, 1911	753,600.00		
" Oct. 20, 1911	753,600.00		969
" Jan. 20, 1912	753,600.00		
		$3,014,400.00	
Extra 35% payable Dec. 20, 1911		10,550,400.00	
" 10% " " 22, 1911		3,014,400.00	
To Balance to Credit:			
December General Balance Sheet		25,502,631.21	
		$42,081,831.21	

970

By Balance brought forward from December 31, 1910.	$32,449,789.13
By net income for the year ending December 31, 1911	9,632,042.08
	$42,081,831.21

COAL DEPARTMENT OPERATIONS—SALES AND EARNINGS.

1911.

Coal Sales:

971

	Tons.		
At Mines	84,184	$250,207.36	
Company's Supply	1,416,332	1,610,876.68	
D., L. & W. Coal Co.	8,390,595	20,638,495.33	$22,499,579.37
Total Sales	9,891,111		$22,499,579.37
Coal Land Rents	.....	.....	6,635.05
Total Sales and Earnings	9,891,111	.....	$22,506,214.42
Coal on Hand December 31st	310,140	.....	87,073.10

972

$22,593,287.52

COST AND EXPENSES. 973

1911.

	Tons.		
Cost of Coal Mined, Washed and Purchased	10,025,166	.....	$17,692,155.86
Handling, Selling, &c.			
Local Handling—Scranton	.....	$46,644.65	.....
General Expenses	.....	149,063.71	.....
Total	.....	.....	195,708.36
Improvements	.....	.....	747,265.59 974
Taxes	.....	.....	390,000.00
Total Cost and Expenses	10,025,166	.....	$19,025,129.81
Profit	.....	.....	3,490,084.58
Coal on Hand January 1st	176,085	.....	78,073.13
			$22,593,287.52

975

976 **Petitioner's Exhibit P22.—Extracts from Annual Report of The Delaware, Lackawanna & Western Railroad Company for the Year Ending December 31st, 1912.**

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

MANAGERS.

Elected at the annual meeting of Stockholders, February 20th, 1912.

977

William Rockefeller.	John D. Rockefeller, Jr.
Henry A. C. Taylor.	William H. Moore.
George F. Baker.	William Fahnestock.
James Stillman.	George F. Baker, Jr.
Harris C. Fahnestock.	William H. Truesdale.
Frederick W. Vanderbilt.	S. S. Palmer.
M. Taylor Pyne.	John F. Talmage.

EXECUTIVE COMMITTEE.

Willliam Rockefeller. George F. Baker.

M. Taylor Pyne.

William H. Truesdale, President.

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OFFICERS.

President—William H. Truesdale, New York, N. Y.

Vice-President—Edward E. Loomis, New York, N. Y.

Vice-President, in Charge of Traffic Department—P. J. Flynn, New York, N. Y.

Vice-President and General Counsel, in charge of Legal Dept.—William S. Jenney, New York, N. Y.

Assistant to the President—T. E. Clarke, Scranton, Pa.

Secretary and Treasurer—Arthur D. Chambers, New York, N. Y.

Assistant Secretary and Assistant Treasurer—R. B. Scofield, New York, N. Y. 979

General Superintendent—E. M. Rine, Scranton, Pa.

General Auditor—G. E. Hustis, New York, N. Y.

Freight Traffic Manager—J. H. Crawford, New York, N. Y.

Assistant Freight Traffic Manager—Nat. Duke, New York, N. Y.

General Freight Agent—A. S. Learoyd, New York, N. Y.

Passenger Traffic Manager—George A. Cullen, New York, N. Y.

Superintendent Motive Power and Equipment—H. C. Manchester, Scranton, Pa.

Chief Engineer—George J. Ray, Hoboken, N. J. 980

General Manager Coal Mining Department—R. A. Phillips, Scranton, Pa.

Purchasing Agent—C. C. Hubbell, New York, N. Y.

ANNUAL REPORT

OF

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

For the Year Ending December 31st, 1912.

Revenues:

From Transportation of Coal	$13,280,304.16
From Transportation of Merchandise Freight	13,999,358.81
From Transportation of Passengers	7,722,953.05
From Transportation of Mail	186,501.61
From Transportation of Express	832,870.94
From Transportation of Milk	976,601.76
Other Revenue from Transportation	356,381.41
Revenue from Operations other than Transportation	209,538.85
Total Revenues	$37,564,510.59

981

982

Expenses:		
For Maintenance of Way and Structures		$4,646,174.71
For Maintenance of Equipment		6,128,762.27
For Traffic Expenses		822,835.48
For Transportation Expenses		11,778,982.27
For General Expenses		769,668.10
Total Expenses	64.28%	$24,146,422.83
Net Revenue from Operation	35.72%	$13,418,087.76
Outside Operations:		
983 Operating Revenues		$ 3,529,131.48
Operating Expenses		2,967,509.23
Net Revenue from Outside Operations		$ 561,622.25
Total Net Revenue		$13,979,710.01
Less Taxes		1,771,980.00
		$12,207,730.01
Add for Additional Income:		
Interest on Investments		$ 404,743.32
984 Coal Department Earnings		2,111,896.66
*Depletion of Coal Deposits		1,773,610.87
Dividends on Stocks		820,106.26
Rentals—Miscellaneous		179,457.64
Interest, Discount and Exchange		3,415.89
Miscellaneous Income		124.64
Hire of Equipment		199,689.69
		$ 5,493,044.97
Total Income		$17,700,774.98

*Represents value in ground of coal owned in fee and mined during the year by the Company in the conduct of its mining operations.

Less Charges:		985
Rentals of Leased Roads	$ 5,688,587.83	
Renewals and Betterments	1,720,697.58	
Interest on Bonds	6,486.00	
Rentals—Joint Facilities	158,690.49	
Sundry Additions and Deductions	40,307.09	
Discount on Bonds Sold	43,935.00	
Total Charges	$ 7,658,703.99	
	$10,042,070.99	
Less:		
Ten Per Cent. (10%) Dividends on Stock	$ 3,014,400.00	
Ten Per Cent. (10%) Extra Dividend Payable December 20	3,014,400.00	986
	$ 6,028,800.00	
Balance, Surplus	$ 4,013,270.99	

TRAFFIC STATISTICS

For the Year Ending December 31st, 1912.

	1912.	
Coal Traffic:		
Total Tons (Gross) Transported	8,483,899	987
Number Tons Carried One Mile	1,591,246,126	
Average Distance Carried	188 miles	
Average Rate Earned per Ton	$1.57	
Average Rate per Ton per Mile	.00835	
Merchandise Traffic:		
Total Tons (Net) Transported	13,394,359	
Number Tons Carried One Mile	2,139,002,170	
Average Distance Carried	160 miles	
Average Rate Earned per Ton	$1.045	
Average Rate per Ton per Mile	.00654	

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988

EARNINGS.

The gross earnings of the Company for the year 1912 were substantially larger than for any previous year in its history; this notwithstanding the fact that the Company's mining operations were suspended during the months of April and May pending negotiations for a new schedule of wages for its mine employes. As a result of this suspension the earnings of the Company from the transportation of coal were reduced below those of the preceding year in the sum of $816,420.77. After the resumption of mining operations in the latter part of May the Company's collieries were operated to their full capacity, but it was
989 impossible to make up for the loss of tonnage resulting from the two months' suspension.

* * * * * * * *

COAL MINING DEPARTMENT.

The net income from the operations of this department during the year was $2,111,896.66, or $427,629.03 more than in the year 1911.

From the coal produced there was also realized the sum of $1,773,610.87, the estimated value in the ground of such portion of the coal owned in fee by this Company as was mined during the year; or, stating it otherwise, this sum represents the depletion of the Company's capital so far as same consists of the value of the coal owned
990 by it which is in the ground and unmined. The amount named above was $32,206.00 less than that representing the depletion value of the coal mined in the preceding year.

* * * * * * * *

The tonnage produced from the collieries and washeries of the Company during the year was 8,166,790 tons, or 278,894 tons less than in 1911. This decrease was entirely due to the suspension of mining operations during the six weeks in April and May last covered by the negotiations for a new wage scale. The agreement finally reached cover-

ing this important matter involved a substantial increase 991
in the wages paid to nearly all of the mine employes of the Company, and the agreement as closed covers a period of four years ending with March 31st, 1916.

During the past eleven years there has been a steady and continuous increase in the cost of mining coal; for the year 1912 the cost to this Company was $.62 per ton higher than in 1901, the year preceding the great strike. The wages of mine employes continue to increase steadily, and more employes are required each year to produce a given quantity of coal. The prices of all classes of material used in the maintenance and operation of the collieries are higher than ever before.

In the older workings the output of coal very largely 992
comes from either the surface veins, being those near the top of the ground, or the thin ones lying below all those others which in the mining operation require a large amount of rock excavation and dead work in order to produce a ton of coal.

In the deeper and thinner veins, in order to overcome the high mining cost the Company has introduced a large number of coal cutting machines, operated by electricity, which are being operated successfully and enable it to produce coal from these veins which it can sell without loss, which it could not otherwise do.

The Company has continued making expenditures which aggregate large sums each year for appliances such as 993
named above and for electrical equipment of all kinds, the purpose of which is to mine coal that ten years ago was deemed practically impossible to mine excepting at such large cost as to make it unprofitable.

Regardless of all that has been done in this direction in the past, or that is reasonably possible in the future, there is no doubt but what the cost of producing anthracite coal will in the future, as in the past, show a steady increase from year to year.

* * * * * * * *

994 Another important item of increase in the cost of coal mining is the taxes levied on the coal properties. This item of cost during the last year increased more than twenty-four per cent., the taxes paid being largely on coal in the ground, much of which will not be mined for many years to come.

Although, as previously stated, a new wage scale was negotiated during the past year with the mine employes of the Company, following the agreement made and as a result of more or less misunderstanding of the terms thereof the Company had much disaffection among its employes and a number of small strikes that were most perplexing and annoying, and to some extent both reduced the output of
995 coal from the Company's collieries and increased the cost of same. These troubles are gradually quieting down, however, and the management hopes these conditions will be more satisfactory during the coming year.

* * * * * * * *

CONDENSED GENERAL BALANCE SHEET.
DECEMBER 31st, 1912.

ASSETS.

Cost of Road	$22,370,126.03	
Cost of Equipment	8,680,321.69	
Other Permanent Investments	3,097,848.70	
996		$34,148,296.42
Stocks in Treasury	$ 9,118,658.20	
Bonds in Treasury	10,126,048.24	
		19,244,706.44
Replacement of Equipment	$1,259,181.20	
Advances to Leased and Controlled Roads	4,437,501.71	
Cash	1,252,754.65	
Coal on Hand	47,638.93	

Coal Bills and Sundry Accounts due		997
Due from Agents and Conductors	1,932,632.43	
Sundry Accounts Receivable	948,442.18	
Material, Fuel and Other Supplies	1,843,445.48	
Bills Receivable	2,942,326.87	
Suspense Account	17,539.15	
	40,341.70	
	14,721,804.30	
	$68,114,807.16	998

LIABILITIES.

Capital Stock	$30,277,000.00	
Premiums Realized on Capital Stock	70,720.00	
Bangor & Portland Ry.—1st Mortgage Bonds of 1930	$150,000.00	
Bangor & Portland Ry.—2nd Mortgage Bonds of 1932	100,000.00	
Bangor & Portland Ry.—Mortgage Bonds of 1936	70,000.00	
Rentals Accrued—not due	320,000.00	
Past Due Dividends, Interest and Rentals	1,697,266.74	999
Delaware, Lackawanna & Western Dividend —payable January 20th	136,985.32	
Audited Vouchers	753,600.00	
Audited Pay Rolls	1,878,456.28	
Accrued Taxes	1,683,318.71	
Mortgages on Real Estate	1,709,220.24	
Miscellaneous Accounts	26,666.66	
Profit and Loss—Surplus	45,671.01	
	29,515,902.20	
	$68,114,807.16	

000 INCOME ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1912.

To Operating Expenses			$24,146,422.83
" Outside Operations Expenses			2,967,509.23
" Coal Mining Expenses			19,507,785.31
" Rentals—Joint Facilities			158,690.49
" Taxes			1,771,980.00
" Interest on Bonds			6,486.00
" Discount on Bonds Sold			43,935.00
" Sundry Additions and Deductions			40,307.09
" Rentals of Leased Roads:			
" Morris & Essex R. R.	$2,817,838.33		
1001 Morris & Essex Exten. R. R.	8,840.00		
Newark & Bloomfield R. R.	6,231.00		
Passaic & Delaware R. R.	5,552.50		
Pass. & Del. Extension R. R.	4,000.00		
Warren R. R.	174,790.00		
Lacka. R. R. Co. of New Jersey	430,000.00		
Valley R. R.	37,500.00		
New York, Lack. & West. Ry.	1,670,000.00		
Cayuga & Susq. R. R.	54,600.00		
Greene R. R.	12,000.00		
Utica, Chen. & Susq. Vy. Ry.	240,000.00		
Syracuse, Bing. & New			
1002 York R. R.	75,000.00		
Oswego & Syracuse R. R.	152,236.00		
			5,688,587.83
Coal on Hand December 31, 1911		$87,073.10	
Less Coal on Hand December 31, 1912		47,638.93	
			39,434.17

To Appropriations for Betterments		1,720,697.58	1003
Balance, being net income for the year carried to Profit and Loss Account		10,042,070.99	
		$66,133,906.52	
By Revenue from Transportation		$37,354,971.74	
" Revenue from Operations other than Transp.		209,538.85	
" Revenue from Outside Operations		3,529,131.48	
" Coal Sales		21,645,861.22	
" Coal Land Rents		13,254.92	
" Depletion of Coal Deposits		1,773,610.87	
" Miscellaneous Income from other sources:			1004
Dividends on Stocks owned	$820,106.26		
Interest on Bonds owned	404,743.32		
Interest, Discount and Exchange	3,415.89		
Hire of Equipment	199,689.69		
Rentals—Miscellaneous	179,457.64		
Miscellaneous Income	124.64		
		1,607,537.44	
		$66,133,906.52	1005

1006

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING DECEMBER 31st, 1912.

To Dividends: (10% per annum)		
Payable April 20, 1912	$753,600.00	
" July 20, 1912	753,600.00	
" Oct. 21, 1912	753,600.00	
" Jan. 20, 1913	753,600.00	
		$ 3,014,400.00
Extra 10% payable Dec. 20, 1912		3,014.400.00
To Balance to Credit:		
December General Balance Sheet		29,515,902.20
		$35,544,702.20
By Balance brought forward from December 31, 1911		$25,502,631.21
By Net income for the year ending December 31, 1912		10,042,070.99
		$35,544,702.20

1007

1008

COAL DEPARTMENT OPERATIONS—SALES AND EARNINGS. 1009

1912.

	Tons.		
Coal Sales:			
At Mines	93,196	$ 261,958.49	
Company's Supply	1,360,210	1,548,797.40	
D., L. & W. Coal Co.	7,779,824	19,835,105.33	
Total Sales	9,233,230		$21,645,861.22
Coal Land Rents			13,254.92
Total Sales and Earnings	9,233,230		$21,659.116.14 1010
Coal on Hand December 31st	101,829		47,638.93
			$21,706,755.07

1011

1012

COST AND EXPENSES.

1912.

	Tons.		
Cost of Coal Mined, Washed and Purchased	9,024,919		$16,024,037.44
Local Handling—Scranton		$ 50,480.57	
General Expenses		174,905.77	
Total			225,386.34
Improvements			964,750.66
1013 Taxes			520,000.00
Value in Ground of Coal Produced from Company's Fee Lands			1,773,610.87
Total Cost and Expenses	9,024,919		$19,507,785.31
Profit			2,111,896.66
Coal on Hand January 1st	310,140		87,073.10
			$21,706,755.07

1014

Petitioner's Exhibit P23.

(Map in folder at end of record.)

Petitioner's Exhibit P24.—Letter, Loomis to Dickson, of March 16th, 1910. 1015

March 16th, 1910.

Mr. J. B. Dickson,
President, Price-Pancoast Coal Co.,
17 Battery Place, New York.

Dear Sir:—

I have your favor of the 15th instant, in reference to restricting tonnage from Pancoast Colliery, and note particularly what you say about your inability to give us more coal in April and May than we take from you in March.

The facts are, as you well know, it is almost impossible to move any coal this month at full circular. While some 1016
of the Companies, I think, will make concessions, I cannot help but think it is a mistake and is bound to lead to demoralization. Last year we were able to work much better time owing to the possibility of labor troubles, but at this time we have the stocking plants on our own road practically filled. We have had eight of our own Collieries shut down all this month and will be obliged to shut down more and work the others on greatly restricted time the balance of the month.

If we had a place to put our coal we might be willing to take more in March, even if we did lose it by the drop in price, if we had storage facilities, but under present conditions, about the only thing left for us to do is to restrict 1017
mining, or go out and sell coal in March at April prices, which I think would be a mistake for the reason stated above.

Yours truly,

E. E. LOOMIS.

1018 **Petitioner's Exhibit P25.—Memorandum, Memory to Learoyd, of January 30, 1911.**

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY,

Office of the Line Sales Agent,
Newark, New Jersey.

January 30, 1911.

A. S. Learoyd, 27th; R. W. Davis, 26th; re reduction of rate to Perry; Silver Lake R. R.

1019 Respectfully referred to
Mr. A. S. Learoyd,
Assistant General Freight Agent,
New York City.

We have not attempted to do any business at Perry or other points on the Silver Lake R. R. for some two (2) or three (3) years. It is mostly a chestnut market, and we are not very keen about going in there for business, and unless the B. R. & P. care to stand the entire shrinkage, as you suggest, you need not reduce the rate to $2.00 per ton, unless you think with Mr. Davis whose point is well taken, that rates higher than $2.00 and $1.75 for prepared and smaller respectively should not obtain at a point nearer the
1020 mines than Buffalo.

S. G. MEMORY.

A. O.

What do we get now?

A. S. L.	A. S. L.	
Prepared	P. & Smaller	
2.10	1.85	Thru
1.45	1.20	D. L. & W. Pro
	A. O.	

Petitioner's Exhibit P26.—Letter, Learoyd to Loomis, of December 6, 1911. 1021

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,

General Freight Department,
90 West Street, New York City.

December 6th, 1911.
In your reply please
refer to File No. L-18103.

12-9-11
Mr. Loomis—I do not see why basis of rates herein suggested are not O. K. 1022
J. L. S.

Mr. E. E. Loomis,
Vice-President,
Building.

Dear sir:—

Supplementing our memo. of even date in connection with rates on coal from Minooka, Pa.

Our previous note to you was based on the supposition that the shipper would demand from Minooka the same rates that we have in force from collieries and washeries on our line to Hoboken.

On the understanding that we can secure rates as follows: 1023

Pea Coal	$1.50
Buckwheat	$1.30
Rice and Barley	$1.23

the argument set forth in our other note to you, could be laid aside for the reason that the rates mentioned above, being higher to a considerable extent that the rates applying from our own washeries, would create a precedent which could be followed in other applications made to us for rates on Anthracite coal from points on connecting lines to destination on our road, including Hoboken.

1024 On the rice and barley proposition the rate $1.23, after allowing the D. & H. 30c. per gross ton, would leave us 93c. as a proportion Scranton to Hoboken which, in view of the fact that we escape the originating expense of the coal and the fact that it is a joint rate proposition, bearing in mind the heavy lading of the cars, would give us a satisfactory revenue per car.

I have only the assurance of the D. & H., given to me in the past, that, if we permitted them to publish rates from points of shipment on our line where the rate to their junction point was 30c., they would take similar action in the reverse direction if request was made upon them.

1025 I have no reason to doubt, therefore, but that they will agree to the Minooka proposition if we furnish the cars and allow them 30c. per gross ton and, on the basis of the above figures this Department would be prepared to recommend that these through rates be put in force on the understanding, of course, that the shipper is in a position to make use of such rates if published.

Yours truly,

A. S. LEAROYD,
General Freight Agent.

Mar. 20, 1912.

Mr. E. E. Loomis:

Referring to attached:

1026 I do not believe that we should undertake, on any commercial movement of anthracite coal in the anthracite district, to make less than our regular switching charge of 30c. per gross ton. If we once start cutting this figure for any certain or specific movement, it is more or less difficult to tell where we are going to stop.

Do you agree?

(Not Signed.)

Petitioner's Exhibit P27.—Letter, Memory to Loomis, of December 30, 1911. 1027

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY,
Office of the Line Sales Agent.
Newark, New Jersey.

Dec. 30th, 1911.

Mr. E. E. Loomis,
President, D. L. & W. Coal Co.
New York City.

Dear Sir:—

Supplemental to my letter to you of the 27th, I wish to say that based on our tonnage this year, and our present cost for Buckwheat and Barley, we are losing, and would lose next year in all the M. & E. territory, as follows: 1028

On Buckwheat 204,274 tons 1c. per ton or $2,042.74
On Barley, 88,654.17 tons, 5c. per ton, or $4,432.74.

Whereas, we ought to make 10c. on Buckwheat or $20,427.40; 10c. on Barley, or $8,865.48. This is circular prices throughout.

Whether this be a matter of price or rate adjustment, it should be attended to at once.

We cannot shove the coal to Tide, for the industries have been fostered on the D. L. & W. line and must be taken care of. 1029

Yours truly,

S. G. MEMORY.

1030 **Petitioner's Exhibit P28.—Letter, Memory to Smith, of June 11, 1912.**

THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY,
Office of Line Sales, Agent.
Broad & Market, Newark, N. J.

S. G. Memory,
Line Sales Agent.

June 11, 1912.

Olean, New Business.

Mr. H. A. Smith, A. L. S. A.:

1031 Answering yours of yesterday. I agree with you that our allotment will not permit us to take on new business at a distance lateral to our mainline at present, and in the winter such trade is a responsibility.

There are a number of dealers at Olean, and its logical supply is through the "Erie," whose friendship we want to hold, as we are commonly interested at so many points. The people of Olean are well taken care of and to add another coal yard would help only the Pittsburg, Shawmut and Northern and their dealer, and at the expense of others. I recall that they were instrumental in locating a yard on their tracks at Wayland, N. Y., carting the coal a considerable distance south. You will also remember that at Angelica we were always burdened with taking care of
1032 that town in the winter when coal was scarce, and gave it up.

If we go so far off the line, why not give Syracuse and Utica Agencies the advantage of any extra coal?

No matter how well disposed we feel toward the Pittsburg, Shawmut & Northern family, I do not see how we can comply with their request, excepting at the expense of others of our commercial friends.

Yours truly,

(Sgd.) S. G. MEMORY.

Copy to Mr. J. B. Keefe.

Petitioner's Exhibit P29.—Letter, Loomis to Learoyd, of March 2, 1911. 1033

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.
Coal Department,
90 West Street, New York City.

E. E. Loomis,
Vice-President.

March 2nd, 1911.

Mr. A. S. Learoyd,
Asst. Gen'l Freight Agent,
Building.

Dear Sir: 1034

I return herewith Mr. Cairns' letter to you under date of February 23rd. We can see no objection, whatever, to giving the Lackawanna and Wyoming Valley Railroad Company our zone rates of 30c., 45c. and 60c. respectively, for the first, second and third zones, as per our regular tariff. In fact, we would like to encourage such shipments to the industries located on D. L. & W. tracks, as in a measure it tends to relieve the D. L. & W. Coal Company who prefer to send their shipments out along the line.

We would prefer, however, to discourage making through rates from points on a foreign road to local points on the D. L. & W. R. R. This would establish a precedent and 1035 lead to complications. You will remember the C. R. R. Co. of N. J., took the same position when a request was made for through rates to points on their road by the Marian Coal Company located on the D. L. & W. tracks.

Yours truly,

E. E. LOOMIS,
Vice President.

1036

PLEADINGS.

ORIGINAL PETITION.

IN THE

District Court of the United States

FOR THE DISTRICT OF NEW JERSEY.

THE UNITED STATES OF AMERICA,
Petitioner,

1037

v.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY and THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY,
Defendants.

ORIGINAL PETITION.

To the Honorable the Judges of the District Court of the United States for the District of New Jersey sitting in equity.

1038

I.

Your petitioner, the United States of America, by John B. Vreeland, its attorney for the district of New Jersey, acting under the direction of the Attorney General, brings this proceeding in equity against The Delaware, Lackawanna & Western Railroad Company, a Pennsylvania corporation, and The Delaware, Lackawanna & Western Coal Company, a New Jersey corporatin, for the purpose of preventing and restraining them from further violating the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (the antitrust act) and also the provisions

of the commodities clause of Section 1 of the Act to regulate commerce as amended June 29, 1906 (34 Stat., 584), which prohibit a railroad company from transporting in interstate or foreign commerce articles or commodities, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have an interest, direct or indirect, except those intended for use in its business as a common carrier. 1039

And upon information and belief, your petitioner alleges and shows—

II.

Defendant, The Delaware, Lackawanna & Western Coal Company, is a corporation organized and existing under the laws of New Jersey, with its principal office at Hoboken therein and outstanding capital stock of $6,590,700. Among the objects for which it was established and the perpetual powers granted to it are the following, shortly stated: 1040

To purchase, mine, produce, prepare, manufacture, and sell or deal in coal, coke, and other commodities and to act as sales and purchasing agent or factor of other corporations.

To purchase, buy, or lease coal or ore mines and all manner of interest in lands, and to develop, improve, lease, and dispose of the same.

To buy, build, construct, or otherwise acquire and maintain and operate piers, docks, and all necessary conveniences and means of transportation incidental to carrying on the business of buying, selling, and trafficking in coal and other commodities and for the development and operation of lands and mines. 1041

To acquire by purchase or otherwise and to hold as investments and to guarantee the principal, interest, and dividends of the bonds or shares of other corporations.

To aid any corporation or association whose securi-

1042 ties it may hold and to conduct its business in the State of New Jersey and in all other States and foreign countries.

It is now and, since the second day of August, 1909, has been engaged in the business of dealing in anthracite coal within the States of New Jersey, Pennsylvania, and New York at the various places, towns, and cities reached by the lines of The Delaware, Lackawanna & Western Railroad, especially at Hoboken, New Jersey, where are situated the New York Harbor terminals to which that railroad constantly transports from the mines in Pennsylvania large quantities (to wit, 3,000,000 tons per annum) of the coals
1043 accepted there by the defendant Coal Company under the terms of the agreement hereinafter described. It also has agents and offices in other States and carries on business therein.

The Delaware, Lackawanna & Western Railroad Company is a corporation duly organized and existing under and by virtue of the laws of Pennsylvania, with offices therein at Scranton, also in New York City, and within this judicial district. It is authorized by its franchises to carry on the business of a common carrier, to own and operate coal mines in the State of Pennsylvania, and to buy and sell coal. For a long time it has owned, leased, and operated as one system lines of railroad in the States of New Jersey, Penn-
1044 sylvania, and New York, connecting among other places therein Hoboken, Scranton and Northumberland, and Utica, Binghamton, Oswego, and Buffalo; also many lateral and branch lines, some of which reach the anthracite coal mines owned by it and also some owned by others lying within the Counties of Lackawanna and Luzerne, Pennsylvania, and in the Wyoming region of the anthracite coal fields. Over such lines this defendant is now and for thirty years and more last past has been engaged in interstate and foreign commerce as a common carrier of passengers and freight, especially of anthracite coal not intended for its own use. Over some of them it has been so engaged for more than fifty years.

It likewise owns and operates a fleet of marine barges which carry anthracite coal from Hoboken, N. J., to points in New England. 1045

At various times (commencing prior to 1860) the defendant Railroad Company has acquired by purchase or lease and now holds some 15,000 acres of lands containing anthracite coal lying in said Lackawanna and Luzerne Counties. Approximately one-half of these were acquired after January 1st, 1874, when the present constitution of Pennsylvania became effective. That instrument, Article XVII, Section 5, provides:

> No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length. 1046

Upon the lands so acquired and held there are many collieries which have long been and now are being constantly operated by the defendant Railroad Company in its own name; and at all times the coals therefrom, when ready for transportation, have been mined and produced by and the full legal title thereto vested in it. Their annual output has been at the approximate rate of 7,000,000 to 10,000,000 tons; and this probably will continue indefinitely. Great quantities of the same, intended for sale and distribution in different States, to wit, from 7,000,000 to 8,000,000 tons annually, not necessary or intended for defendant's use in its business as a common carrier, have long been and now are loaded upon its cars at the mines 1047

1048 or adjacent breakers and then carried by it in interstate and foreign commerce to various points outside of Pennsylvania. Part moves to the North and West, while approximately 3,000,000 tons—mostly small sizes—has been and is carried each year to Hoboken, New Jersey, on the New York Harbor and sold there; and defendant intends to continue to transport the same substantially as heretofore.

For a long time this defendant has been accustomed to buy almost the entire output—75 per cent. or more—shipped from the mines and breakers located along its lines which are owned and operated by others—in 1911, 1,500,000 tons; has transported most of the same in inter-
1049 state and foreign commerce, and intends hereafter to continue the same course of action.

III.

Anthracite coal is an article of prime necessity in general use for domestic purposes throughout New England and the Middle Atlantic States, and is also largely burned in other sections of the Union and in Canada. The smaller sizes are much in demand for steam purposes in and about New York City, Boston, and other large cities in the East. The source of the entire supply, except a small amount of inferior quality, is in northeastern Pennsylvania, where the deposits underlie an area of about
1050 484 square miles, divided for trade purposes into the Wyoming, the Lehigh, and the Schuylkill regions.

The total annual output of all the mines is approximately 75,000,000 tons. About 12 per cent. is consumed at or near the collieries, while the remainder (with insignificant exceptions) is carried away over the lines of the nine railroad companies named below which extend thereto—four-fifths being transported and sold in interstate and foreign commerce, viz.:

Philadelphia & Reading Railway Company; the Central Railroad Company of New Jersey; Lehigh Valley Railroad

Company; the Delaware, Lackawanna & Western Rail- 1051
road Company; Erie Railroad Company; the New York, Susquehanna & Western Railroad Company; the Delaware & Hudson Company; Pennsylvania Railroad Company; New York, Ontario & Western Railway Company.

Except the lines of the Delaware & Hudson Company, all these railroads reach New York Harbor and carry there, where the same is ultimately sold, 25 per cent. of the total shipments of anthracite moving by rail, their rates therefor being approximately the same, irrespective of the length of the haul. This is by far the most important market for such coal. In it from 18,000,000 to 20,000,000 tons are annually sold, and distribution is made therefrom by water or otherwise to points in various 1052
States. Being the chief distributing point, prices prevailing there largely fix and regulate those in other markets.

The terminals of the railroads carrying such traffic on New York Harbor are at separate points on the New Jersey side, from Edgewater on the north to South Amboy on the south; and at these points, after passing the larger sizes over screens, the coal is weighed, dumped into barges, and is quoted and sold free on board thereof.

The above mentioned anthracite carrying railroads and the great coal companies united or affiliated with them severally in ownership or management have long engrossed the output of the collieries. Each road directly or through one or more coal companies has contrived to gain control 1053
over the output of most of the mines served by it and the sale of the same. This is especially true of coal moving to New York Harbor, and as a consequence f. o. b. prices of anthracite at the various terminals there are made and controlled by the defendant railroad and other railroad companies and their affiliated coal companies. These prices or their averages are reported monthly by the sellers to a bureau of statistics sustained by them jointly, and the result is then sent out to all of them.

The substantially uniform prices for anthracite f. o. b. New York Harbor now quoted and demanded are from

1054 $5.25 per ton for certain prepared sizes down to $1.80 for the size known as barley. These necessarily depend upon the freight charges demanded by the railroads, and under normal and natural conditions would vary with the same; and these charges have long been and now are exceedingly high, in fact, excessive. The present tariff schedules fix them at approximately $1.50 per ton for prepared sizes down to $1.10 for the small sizes, or from about 25 per cent. to 60 per cent. of the f. o. b. prices New York Harbor, of the coal transported.

IV.

1055 Prior to August 2, 1909, the defendant Railroad Company, acting openly in its own name, mined coals from its own collieries and whilst holding full legal title thereto transported the same to the markets in different states for sale therein and not for use in its business as a common carrier. Almost the entire production of all the anthracite mines along its lines was also sold by it in the markets of different states, the output of those not owned having been purchased at the breakers as above shown.

In order economically and expeditiously to transport and sell this coal, the defendant Railroad Company constructed at points in different states, adjacent to or connected with its tracks, extensive terminal facilities, storage
1056 yards, depots, docks, wharves, transfer trestles, coal trestles, sale yards, and other accessories essential or convenient for carrying on such business. Its great financial ability, its power and position as a common carrier, and the exclusive use of these facilities, put other producers and operators at a serious disadvantage when seeking to market their coal in competition with it. In consequence the railroad was enabled to and did purchase so much of the output of collieries owned and worked by others as, added to its own, gave it the disposition of more than 90 per cent. of the entire production along its lines, complete dominance of the market therefor and a monopoly thereof; and gave

it the power arbitrarily to fix prices at all points not reached by another railroad. But for such purchases most of this coal from mines not owned by it would have been sold in interstate and foreign commerce in competition with the railroad; and if not so purchased in the future will be so sold in competition. 1057

The business of the defendant railroad has been immensely profitable and its financial strength is very great. A majority of its stock has long been and is now held in large blocks by less than twenty-five individuals and interests who act in concert and unity. A still smaller number have and do dominate and control its affairs, being enabled thereto by their stock holdings and their unity of purpose and effort. 1058

V.

Section 1 of the act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," as amended by the act approved June 29, 1906 (34 Stat., 584), provides:

> From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any state, territory, or the District of Columbia, to any other state, territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier. 1059

The inhibitions of this provision rendered it unlawful after the first of May, 1908, for defendant railroad to transport in interstate and foreign commerce coal purchased by

1060 it or produced by the mines which it owned and operated while having an interest in such commodity unless intended for use in its business as a common carrier.

The combined business of buying, mining, transporting, and selling anthracite had been immensely profitable to the railroad and to its stockholders; and those who dominated and controlled its affairs desired to preserve for themselves such profits and to continue the business substantially as theretofore conducted, notwithstanding the manifest purpose of the provisions of the act above quoted. To that end, accordingly, they determined to cause the organization of a new corporation to be under their own control—whose stockholders would be substantially the 1061 same as those of the Railroad Company—and through it to conduct the business theretofore carried on by the railroad sales department, thus securing, in effect, the continued unity of mining, transporting and selling, in substance as theretofore, and depriving the public of the benefits which the aforesaid act was intended to produce.

Thereupon, they caused their representatives and nominees to organize under the laws of New Jersey, on or about June 30, 1909, defendant The Delaware, Lackawanna & Western Coal Company, with an authorized share capital of $6,800,000—one-fourth of the then outstanding capital of the defendant railroad—such shares being intended for 1062 pro rata distribution among the railroad's stockholders. Their further purpose was to cause the two defendants to enter into the contract and arrangement hereinafter described. Accordingly, about the first of July, 1909, they caused the Railroad Company to declare a cash dividend of 50 per cent. and took the further action described in the communication then sent out, a copy of which follows:

> To the stockholders of the Delaware, Lackawanna and Western Railroad Company:
>
> An extra dividend of fifty per cent. has been declared by the board of managers on the capital stock of the company, payable on July 20th, 1909,

to stockholders of record at the close of business on July 1st, 1909. 1063

In conformance with the decision recently rendered by the United States Supreme Court, declaring that this company can not lawfully transport in interstate commerce coal owned by it, a coal-selling company has been organized under the laws of the State of New Jersey, under the name of the Delaware, Lackawanna & Western Coal Company, the capital stock of which will be $6,800,000.00, divided into 136,000 shares of $50.00 each par value.

It is proposed that the Delaware, Lackawanna & Western Railroad Company, as the seller, shall contract with said coal company, as the buyer, to sell and deliver the coal mined and purchased by the Railroad Company to the Coal Company at the mines. 1064

The stockholders of the Railroad Company are hereby invited to subscribe to the capital stock of the Coal Company at the rate of one share of the latter for each four shares of the capital stock of the Railroad Company held by the several stockholders as shown by the books of the company at the close of business July 1st, 1909.

As it is deemed undesirable to issue part shares as scrip, or otherwise, any stockholder whose pro rata Coal Company subscription may entitle him to a part share, may, on payment in cash of the additional amount necessary, acquire a full share instead of the part share allotted to him. 1065

Herewith subscription blank which each stockholder should sign and have duly witnessed in the event he desires to subscribe for the stock of the Coal Company on the basis set forth herein. Such blank contains an order on the Treasurer of the company authorizing and directing that one-half of the dividend of fifty per cent. due and payable on July 20th, 1909, be paid

1066 to the Coal Company in satisfaction of the subscription of such stockholder to the capital stock of the Coal Company. The other half of such dividend will of course be paid in cash. Certificate for the number of shares of stock so paid will be issued in the name of and delivered to the stockholders as the latter may direct.

It is urged by the company's legal advisers that the proposed selling contract be made operative as early as possible.

It is, therefore, respectfully requested that the stockholders of the company take prompt action on the several matters submitted to them hereby.

1067 With insignificant exceptions (about twenty in all, owning together less than $30,000 of stock), the railroad stockholders subscribed for the Coal Company's shares apportioned to them, and immediately the two corporations with all their business and assets came into and they have ever since remained under the substantial ownership and immediate control of the same individuals. William H. Truesdale, President, and Edward E. Loomis, Vice-President of the railroad, have always been two of the seven Directors of the Coal Company and the latter always its President. The other Directors of the Coal Company have likewise been but the nominees and instruments of those in control of the Railroad Company.

1068 Thereupon, according to the plan and on or about August 2, 1909, the two defendants entered into the written contract, a copy of which marked "Exhibit A" is annexed and made a part hereof and which, among other things, in substance provided:

That the Railroad Company would sell to the Coal Company all mined, marketable coal then owned, except such as it should elect to retain for use in its business as a common carrier, to be paid for within thirty days at prices designated.

That the Railroad Company would lease to the Coal Company certain described storage and stocking plants, trestles, and docks, and accept in payment 5 per cent. per annum on a valuation to be agreed upon. 1069

That the Coal Company would take over certain leases of trestles and sales agency contracts theretofore made by the Railroad Company.

That the Railroad Company would sell and deliver to the Coal Company, f. o. b. cars at the breakers, all coal thereafter mined by the former from all lands owned or leased by it, together with all coal purchased by it, the amount to be so sold and delivered to be at the absolute option of the seller and without liability upon its part for failure to supply any. The Coal Company agreed to purchase all coal offered by the Railroad Company, and no other, unless necessary to comply with contracts then outstanding. 1070

That the railroad might retain sufficient coal for its use as a common carrier.

That the Coal Company would accept from the Railroad Company all coal delivered on cars at the breakers, and pay for all sizes above pea 65 per cent. of the general average f. o. b. prices at tide points at or near New York between Perth Amboy and Edgewater, and for the smaller sizes specified portions of such general average prices.

That the Coal Company would conduct the business of selling so as best to conserve the interest of and preserve the good-will and markets of the coal mined by the Railroad Company; that any disputes which might arise between the parties should be settled through a board of arbitration, made up as specified; and that the terms of the agreement itself might also be modified by arbitration if conditions justified. 1071

That the contract should continue to be operative

1072 until six months after either party shall notify the other in writing of its intention to cancel the same, and that upon its expiration the Coal Company would sell to the Railroad Company and the latter would buy all coal then stored or in transit theretofore purchased by the former at prices to be agreed upon or fixed by arbitration.

The copy of the contract, Exhibit A, is specifically referred to for a more complete and definite understanding of its terms and provisions.

In the annual report of the defendant Railroad Company for the year 1909, its President said:

1073 In conformance with the decision rendered by the United States Supreme Court that railroad companies cannot lawfully transport in interstate commerce coal owned by themselves, the sales division of the coal department of the D., L. & W. Railroad was discontinued August 1st, 1909, and a coal-selling company was organized under the laws of the State of New Jersey. Therefore, the annual report of the coal department covers but seven months—from January to July, inclusive—of the sales end of the business. A contract was entered into with the new Coal Company, whereby the railroad agreed to sell its coal on board cars at the mines on the same basis as generally prevails in the anthracite region, or what is known as
1074 the 65 per cent. basis of tidewater prices; and also to sell and turn over all stocks of coal along its lines and on western docks, and to lease its trestles, to the Coal Company.

* * * * * * *

In rearranging its affairs in conformance with the decision of the United States Supreme Court in what is known as the commodities case, the company declared an extra dividend of 50 per cent., which was payable in cash, the stockholders, how-

ever, being given the option to use one-half of this extra dividend in purchasing stock of the Delaware, Lackawanna & Western Coal Company, which was organized and took over the merchandising of this company's coal on August 1st, 1909. At the same time a stock dividend of 15 per cent. was declared and paid to the stockholders of the company. As a result its capital stock was increased to $30,277,000.00. 1075

The defendant Coal Company at once took possession of the coal held by the railroad and entered upon the use of the sundry facilities belonging to it as agreed. The other terms of the arrangement likewise have been and are now being carried into effect. The Railroad Company continues to buy the output of mines belonging to others located along its lines, amounting in 1911 to about 1,500,000 tons, and goes through the form of delivering the same to the defendant Coal Company along with the product from its own mines, amounting annually to about 7,000,000 tons. So much coal as the railroad needs for use in its own business as a common carrier (about 1,000,000 tons annually) is reserved and not delivered to its co-defendant. The Coal Company takes ostensible possession of the coal so offered when delivered on board cars, causes most of it to be transported in interstate and foreign commerce by the defendant railroad, and is carrying on the business of selling the same in its own name at the sundry points in different States reached by the railroad, substantially according to the methods originally adopted by the latter, all as argeed, and both parties intend to continue this course. 1076 1077

The annual sales of the Coal Company—four-fifths being outside of Pennsylvania—amount to from 8,000,000 to 9,000,000 tons, all secured from the defendant railroad and transported by it as above shown. And such coal is not transported for use by the railroad in its business as a common carrier.

1078 By reason of the arrangements described, the support of the Railroad Company, and the peculiar advantages and facilities acquired, the Coal Company at once secured and has ever since maintained an unlawful monopoly of the sale of coal produced along defendant's railroad, and has completely dominated the markets at all points thereon not reached by any other railroad. Its position, power, and support render effective competition with it practically impossible, and the monopoly which it now holds will continue indefinitely unless restrained.

VI.

1079 Since the organization of defendant Coal Company there have been some changes in the ownership of its stock, but its stockholders and those of the defendant railroad who own and control not less than 85 per cent. of the shares of both have been and now are the same individuals or their representatives. Not exceeding twenty-five of these have continuously owned a majority of the stock of both companies, and the affairs of both have been dominated and controlled by a still smaller number acting in concert. Thus substantially the same group of individuals acting together own, control and direct both the business of the railroad and that of the Coal Company.

1080 The operations of the Coal Company have been immensely profitable, as was intended by those who procured its organization and gave it the above described sales contract. Dividends have been paid at the rate of 10 per cent. per annum, and a surplus exceeding $3,500,000—more than 50 per cent. of a very large capitalization—has been accumulated in less than three and one-half years.

The Vice-President of the Railroad Company has always been the chief officer of the Coal Company and an active member of its Board of Directors. The affairs of both have been carried on in complete accord and unison and with the purpose and effect of enriching their common shareholders.

The purpose of the Railroad Company and those who 1081
controlled it in organizing the defendant Coal Company was to use the latter as a mere instrumentality for retaining under their direction and for their profit the business of selling coal theretofore carried on by the railroad; and under the agreement of August 2, 1909—Exhibit A hereto —this purpose has been carried into fruition. The Coal Company is and must always be subservient to the will and direction of the railroad, and those who control the latter. They have always constituted its dominant stockholders and probably always will. They elect its officers, determine its policies, and moreover, they may take away its sole business upon six months' notice. If its conduct should fail to meet their approval, it may be deprived of 1082
all benefits under the sales contract—Exhibit A—and its business quickly destroyed. In such event a similar subterfuge could be organized and the profits of the entire business still be secured to the stockholders of the railroad.

The arrangement under which the defendant companies are operating in no proper or legal sense destroys or terminates the interest which the Railroad Company has in the output of the mines which it owns and operates or in the coal which it purchases from others before the same starts in the course of interstate or foreign transportation; but during the entire time and course of such transportation the carrier has an interest therein within 1083
the true meaning and intent of the statute. The two companies are but instrumentalities of the same group of stockholders; the arrangements and contracts between them are but devices to avoid the prohibitions of the Interstate Commerce Act, and operations under them are more damaging to the public than those under the old plan prior to August, 1909. They have enabled the Coal Company to acquire a monopoly of the sales of coal produced along the defendant railroad, and through the exclusive use of the instrumentalities leased by the latter and otherwise this monopoly will be continued. Having in the ways

described secured for itself a monopoly, the defendant railroad successfully undertook to transfer this to the Coal Company, and, unless prevented, such monopoly will continue to the great detriment of the public.

Furthermore, the contract between defendants—Exhibit A hereto—necessarily hinders and prevents the railroad from freely fixing its rates for transporting coal according to recognized and legitimate standards, and introduces a factor into the determination of questions relating thereto which may not be considered consistently with the rights of the public and which necessarily tends to keep such rates unduly high. For since under the contract the Railroad Company receives for its coal at the mines a percentage of the price at New York Harbor, which price is largely determined by the freight rate, it follows that the higher the freight rate from the mines to New York Harbor the higher the price received by the Railroad Company at the mines; and, on the other hand, as the freight rate decreases, such price decreases. The contract is thus not only a barrier against any reduction in the Railroad Company's freight rates to New York, however justified by the conditions, but is an inducement to higher rates regardless of any change in the cost or character of the service. It is in undue, unreasonable, and unlawful restraint of interstate and foreign trade and commerce.

The purchase of coal by defendant Railroad Company as above shown, for resale or for transportation over its lines, is incompatible with its duties as a public carrier, and the necessary tendency of such action is to produce a monopoly of and unlawfully to hinder and restrain interstate and foreign commerce in that commodity. The imperative duty of a common carrier by railroad is to transport freight and passengers for all alike, without discrimination, at fair, reasonable, and just rates; and it may not enter into contracts or arrangements the necessary tendency of which is materially to hinder, impair, or destroy its ability to perform such duty or its freedom in determining what action should be taken

in respect thereto. Especially it may not use its enermous and unusual powers and opportunities to acquire a monopoly nor make contracts or enter into arrangements which necessarily tend towards monopolization. 1087

VII.

Wherefore petitioner prays:

1. That writs of subpœna issue directed to defendants the Delaware, Lackawanna & Western Railroad Company, and the Delaware, Lackawanna & Western Coal Company, commanding each of them to appear herein and answer, but not under oath (oath being expressly waived), the allegations contained in the foregoing petition, and abide by and perform such orders and decree as the Court may make in the premises. 1088

2. That the Court adjudge that the Delaware, Lackawanna & Western Railroad Company has not since August 2, 1909, when the above-described contract between it and the other defendant went into effect, in a *bona fide* way, before accepting the same for carriage, divested itself of all interest in the anthracite coal purchased from others or produced at its mines or under its direction and control; and that it is and has been unlawfully transporting the same in interstate and foreign commerce.

3. That the defendants be enjoined from shipping, transporting, or causing to be transported any anthracite coal, the product of mines owned by defendant Railroad Company or purchased by it from others, and sold, transferred, or delivered to defendant Coal Company in pursuance of the above-described agreement or arrangement existing between them or any similar one. 1089

4. That the Court adjudge the existing arrangements and agreements between the defendants constitute a contract and combination in restraint of trade and commerce among the States and an attempt to monopolize a part of such trade

090 and commerce contrary to the provisions of the Act of July 2, 1890, and that further violations of said act in the ways specified or any similar ones be enjoined.

5. That the Court adjudge the purchase of coal by the defendant Railroad Company from others and the sale or transfer of the same to the defendant Coal Company, or any other party, to be unlawful, and enjoin any such future action.

6. That complainant have such further other and general relief as it may be entitled to.

JOHN B. VREELAND,
United States Attorney,
091 District of New Jersey.

George W. Wickersham,
Attorney General.

James A. Fowler,
Assistant to the Attorney General.

James C. McReynolds,
G. Carroll Todd,
Special Assistants to the Attorney General.

February, 1913.

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092 EXHIBIT A TO ORIGINAL PETITION.

THE UNITED STATES *v.* THE D., L. & W. R. R. ET AL.

This contract entered into this second day of August, 1909, between the Delaware, Lackawanna and Western Railroad Company, hereinafter called the "seller," of the first part, and the Delaware, Lackawanna and Western Coal Company, hereinafter called the "buyer," of the second part, witnesseth:

Whereas the seller is the owner of coal lands situated at various points in the counties of Luzerne and Lacka-

wanna, in the State of Pennsylvania, and has been engaged both in mining the coal therefrom and in transporting to market and selling the same, and in like manner has so transported and sold large amounts of coal purchased by it in said State; and whereas the seller, to so sell its coal, has constructed storage plants and trestles at various points in different States, and has entered into various sales agency contracts; and whereas to so market said coal most of the same must be transported in interstate commerce, so that it has become necessary for the seller, in compliance with law, to sell all of its coal within the State of Pennsylvania; and whereas the buyer is desirous of contracting to so purchase all of the seller's coal at its mines, to contract for the transportation of the same to market, and to sell the same, and for such purpose to lease of the seller various of its storage plants, trestles, offices, and other facilities, and assume its selling agency contracts; 1093 1094

Now, therefore, in consideration of the premises, and of the mutual covenants herein contained, it is agreed as follows:

First. The seller agrees to sell to the buyer, and the buyer agrees to buy of the seller, all mined marketable coal wherever situated now owned by the seller, and either stored, held at various points, or in the course of transportation, except such coal as the seller elects to retain for its use in the conduct of its business as a common carrier. The buyer shall pay the seller therefor, in cash within thirty days from the date hereof, as follows, viz.: For all of the coal in transit, at prices to include the full tariff charges of the seller and of all other carriers whose charges have been paid by the seller for the transportation of such coal from the mines, together with the market value thereof at the mines as fixed herein, at prices prevailing for the month of July, 1909; for all coal stored, of all sizes, at points west and north of Buffalo, N. Y., the sum of five 1095

1096 dollars and fifty cents ($5.50) per gross ton; for prepared sizes of coal stored at Buffalo and at other points along the lines of the owned, leased, and controlled lines of the seller, the sum of four dollars ($4.00) per gross ton; for sizes smaller than prepared sizes so stored at Buffalo and points east, along the lines of the seller, not including that stored at or about the mines of the seller, the sum of one dollar ($1.00) per gross ton. The buyer shall also pay an equitable proportion of taxes for the year 1909 assessed or to be assessed against such stored coal.

The buyer hereby assumes and agrees to pay all unpaid charges of every nature incurred in connection with the transportation or storage of said coal, and hereby assumes
1097 all risks and obligations in connection therewith from the beginning of the day of the date hereof.

Second. The seller shall lease to the buyer contemporaneously herewith, the following properties: The Checktowago stocking plant, at Buffalo, N. Y.; the Port Morris storage plant, at Port Morris, N. J.; the Dover stocking plant, at Dover, N. J.; the Erie Street lake trestle, at Buffalo, N. Y.; the transfer trestle, at East Buffalo, N. Y.; the lake shipping trestle, at Oswego, N. Y.; the canal trestle, Clinton Street trestle, and Geddes yard trestle, at Syracuse, N. Y.; the canal trestle, at Utica, N. Y.; the retail trestles located, respectively at Newark, Harrison, Bloomfield, Summit, and Paterson, N. J.; the Division
1098 Street dock trestle, at Chicago, Ill.; the Wabash dock trestle, at Toledo, Ohio. The rental to be paid the seller by the buyer for the use of said properties shall be five per cent. (5%) of their agreed value, including good will, and the leases shall provide that the buyer shall keep the said properties insured and in repair, and shall contain such other covenants as may be proper to protect the interests of the seller.

The seller has leased certain of its trestles to different persons, as follows: The Main Street, Erie Street, Chicago Street, Seneca Street, Walden Avenue, and Black Rock

trestles at Buffalo, N. Y., to E. L. Hedstrom; the McKinney 1099
trestle at Binghamton, N. Y., the Chemung Coal Company trestle at Elmira, N. Y., the Oswego Coal Company trestle at Oswego, N. Y., the Gilmore trestle at Utica, N. Y., the Horre trestle and elevator on pier five, Hoboken, N. J., Burns Brothers' trestle on property of the seller at South Brooklyn, N. Y., the Klink trestle at Syracuse, N. Y., a coal trestle at Bath, N. Y., and various other trestles located on the lines of its owned, leased, and controlled lines.

The seller has also entered into sales agency contracts, as follows: With E. L. Hedstrom & Co., Chicago, Ill., S. C. Schenck, Toledo, Ohio, North Western Fuel Co., St. Paul, Minn., Milwaukee Western Fuel Co., Milwaukee, Wis., E. L. Hedstrom, Buffalo, N. Y., and Ogdensburg Coal & Tow- 1100
ing Company, of Ogdensburg, N. Y.

All of such leases and sales agency contracts shall be taken over by the buyer as of the date hereof, on terms to be agreed upon, and it shall assume all obligations of the seller with respect thereto, and be entitled to the benefits thereof. The buyer also agrees to lease of the seller the coal sales office building at Buffalo and Syracuse, N. Y., rooms in the station of the seller at Scranton, P. A., and suitable quarters at 90 West Street, New York City.

The seller will provide tht any of the foregoing properties so to be leased to the buyer which are owned by the Syracuse, Binghamton & New York Railroad Company, shall be so leased to it by such corporation.

1101

The seller has also entered into contracts for the sale of coal for the current year with various customers. A schedule of such contracts shall be prepared and furnished to the buyer by the seller. All of such sales contracts shall be assumed by the buyer as of the date hereof, and it agrees to comply with the terms and conditions of such contracts. The buyer also agrees to assume the obligations of a certain contract entered into October 8, 1905, between Lucy A. Turner and the seller in connection with the business of the Henry B. Turner Coal Company at foot of East

1102 23rd Street, New York, and shall be entitled to the benefits thereof without other consideration than that named herein.

The seller has entered into a contract, dated June 17, 1905, expiring August 1, 1910, with the Solvay Process Company, of Syracuse, N. Y., providing for the sale of washery coal at prices named therein. It is understood that the buyer shall assume such contract and supply said company with coal at prices named therein. The seller, however, agrees that as the buyer can not conform to the conditions of such contract without a material loss it will adjust such loss with the buyer upon an equitable basis on terms to be agreed upon.

1103 Third. Subject to the conditions of this paragraph, and at the prices herein stated, the seller agrees, during the terms of this contract, to sell to the buyer all coal hereinafter mined by it from all coal lands owned or leased by it, together with all coal it may purchase. The buyer agrees to purchase all such coal at such prices and to pay the seller therefor in cash on the 20th of each month for all coal delivered to it by the seller f. o. b. cars at the mines during the preceding month. The buyer also agrees on the 15th of each month to pay the seller in cash all tariff charges of its owned, leased, and controlled lines, and all monies advanced by it to other carriers for the transportation of said coal during the preceding month.

1104 The amount of coal to be so delivered and sold to the buyer by the seller shall be at the absolute option of the seller as its interests may determine, and the seller shall be subject to no liability whatsoever for failure to supply the buyer with such amount of coal as it may desire. The buyer agrees that, except to enable it to comply with the terms of the existing hereinbefore recited sales agency and other sales contracts of the seller, in the event of the failure of the seller to sell it coal, it will purchase all coal to be sold by it from the seller, and will purchase no coal from any other person or corporation except with the written consent of the seller.

The seller reserves the right to retain all coal required by

it for the use of its owned, leased, and controlled lines in 1105
the conduct of their business as common carriers. Also such coal as it may desire to sell its employees at the breakers, the same not to be hauled in railroad cars.

The buyer agrees to pay the seller, and the seller agrees to accept from the buyer, the following prices for said coal, to be delivered f. o. b. railroad cars at the various breakers now located and hereafter constructed by the seller at its mines aforesaid.

For all sizes above pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater.

For pea coal, fifty (50) per cent. of the general average 1106
f. o. b. price for pea coal at said tide points at or near New York when the said price is two dollars and fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above two dollars and fifty cents ($2.50) the proportion paid the seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is two dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the seller shall be increased two (2) per cent. until the said f. o. b. 1107
price reaches two dollars and fifty cents ($2.50), after which the proportionate price paid the seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above two dollars and fifty cents ($2.50), as in the case of pea coal above mentioned. Provided that nothing herein contained shall oblige the buyer to pay for buckwheat No. 1 coal a rate higher than for pea coal.

For all sizes smaller than buckwheat No. 1 the seller shall receive twenty-five (25) cents per ton f. o. b. railroad cars at breakers, and for each ten (10) cents increase in the general

1108 average f. o. b. price above one dollar and thirty cents ($1.30) a ton at tide the price shall be increased five cents per ton.

The general average f. o. b. prices herein referred to shall be determined by the general average free on board prices received for the various sizes on general market sales thereof at tide points at or near New York between Perth Amboy and Edgewater during each calendar month, and a statement of such prices shall be furnished the buyer by the seller prior to the 8th day of each month subsequent to that in which such monthly sales shall have been made, the intent of this provision being to ascertain and to fix the market price of the coal at the mines as nearly as may be as of the several and respective days of delivery of the coal at the mines.

1109 Payment on the 20th day of each month for coal purchased during the preceding month shall be made at such prices.

Fourth. The seller agrees that all its coal sold to the buyer shall be properly prepared for market in accordance with the past practice and standards of the seller.

Fifth. The buyer agrees that at any transfer trestles leased to it by the seller it will transfer from car to car any coal which the seller desires to have transferred, at a price to be agreed upon. It is also understood that the parties hereto shall adjust the charges to be paid by the buyer to the seller for coal forwarded to and unloaded from storage or stocking plants and with respect to other transportation charges

1110 to be subsequently covered by tariffs to be filed by the seller.

Sixth. The buyer agrees that it will conduct the business of selling the coal of the seller in such manner as best to conserve the interests of and preserve the good-will and markets of the coal mined by the seller, and to continue to fill the orders of all responsible present customers of the seller even though as to some of such customers the sales may be unprofitable, it being understood and agreed that at the prices above quoted the entire business of the buyer will be conducted at a profit.

Seventh. In the event of dispute as to tidewater prices

or as to the proper interpretation of any provision of this agreement, or if by reason of changes in market conditions, tariff rates or otherwise, modifications or changes in this contract should fairly be made, and the parties hereto cannot agree with respect to such modifications or changes, or if the parties cannot agree as to any matter, it is agreed that all such differences shall be determined by arbitration by a board of arbitrators to consist of one person selected by the general sales agent of the buyer, and one person selected by the President of the seller, and a third person to be selected by the then President of the Farmers Loan and Trust Company of the City of New York, and that the decision of a majority of such board of arbitration shall be final and binding upon the parties hereto. 111

Eighth. Any changes or modifications in the terms, conditions, or covenants of this contract which may hereafter be agreed to may be made by written agreement, duly executed, provided the same be approved by a vote of both the parties hereto acting by a majority of their several Boards of Directors or managers. 1112

Ninth. This contract shall become in effect on the beginning of the day of the date hereof. Upon written notice by either party to the other prior to August 1st, 1910, of its intention to cancel this contract, it shall expire at midnight on the 28th day of February, 1911. Should no such notice be served, the contract shall continue to be operative until the expiration of six months after either party shall notify the other in writing of its intention to cancel the contract, in which event it shall expire at midnight of the last day of the six months named in the notice of cancellation. 1113

Upon the expiration of this contract, the buyer agrees to sell to the seller or to whomever the seller shall nominate, and it agrees to buy or cause to be bought, all coal then stored or in transit purchased of the seller by the buyer, at prices to be agreed upon; or in case the parties cannot agree, to be fixed by arbitration as herein provided.

In witness whereof, the parties hereto have executed this instrument in duplicate the day and year aforesaid, at the city of Hoboken, New Jersey.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
By (signed) W. H. TRUESDALE,
President.

[SEAL.]

A. D. Chambers, Secretary.

DELAWARE, LACKAWANNA & WESTERN COAL COMPANY,
By (signed) E. E. LOOMIS,
President.

[SEAL.]

J. J. A. Owens, Secretary.

Answer of the Defendant Railroad Company.

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA,
Petitioner,

against

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, and THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY,
Defendants.

In Equity No.

Answer of the Defendant, The Delaware, Lackawanna & Western Railroad Company.

The defendant, The Delaware, Lackawanna and Western Railroad Company, answers the petition herein, as follows:

First. Defendant, The Delaware, Lackawanna and Western Railroad Company, admits that this proceeding is

brought under the direction of the Attorney General of the United States as set forth in the first subdivision of said petition. It denies that it is or has been violating the law referred to in said subdivision, or any other law. 1117

Second. This defendant admits that The Delaware, Lackawanna and Western Coal Company is a corporation organized and existing under the Laws of New Jersey, with its principal office at Hoboken, in said State, with outstanding capital stock of approximately $6,590,700.00; that among the objects for which it was established and the perpetual powers granted to it are those set forth under Subdivision "II" of the petition. It further admits that said Coal Company is now and since the 2nd day of August, 1909, has been engaged in the business of dealing in anthracite coal within the States of New Jersey, Pennsylvania and New York, at the various places, towns and cities reached by the lines of The Delaware, Lackawanna and Western Railroad Company, including Hoboken, New Jersey, and that it also has agents and offices in other States and carries on business therein. It further admits that one of the New York harbor terminals of this defendant is located at Hoboken, New Jersey, and that this defendant constantly transports thereto from the mines in Pennsylvania large quantities of the coals accepted by the defendant Coal Company under the terms of an agreement dated August 2nd, 1909, a copy of which, Exhibit "A," is attached to the petition, but it denies that such coal so transported amounts to 3,000,000 tons per annum, or an amount approaching that number of tons. 1118 1119

Third. It admits and alleges that this defendant, The Delaware, Lackawanna and Western Railroad Company, is a corporation duly organized and existing under and by virtue of the Laws of the State of Pennsylvania, with offices therein at Scranton and also in New York City, and within this judicial district; that it is by its franchises and has been since a time long prior to 1874 authorized and empowered, among other things, to carry on the business of a common carrier, to own and operate coal mines in the State of Penn-

120 sylvania, and to buy and sell coal, and that such authority and power have in no wise been abridged, abrogated or repealed by the Constitution of the State of Pennsylvania, effective January 1st, 1874, or otherwise.

It admits and alleges that it owns and operates lines of railroad in the State of Pennsylvania; also many branch lines and laterals some of which reach anthracite coal mines owned by it and some owned by others lying within the Counties of Lackawanna and Luzerne in said State, and in the Wyoming region of the anthracite field. Some of these it has owned and operated since 1855; others it has acquired or constructed as lately as the year 1912. It also admits and alleges that as lessee it operates vari-
121 ous lines of railroad, branch lines and laterals in the States of Pennsylvania, New Jersey and New York, and has so operated them from the dates of the various leases thereof, ranging from October 1st, 1857, to October 1st, 1912. The lines of railroad so owned or leased connect and have connected among other places, Hoboken, New Jersey, Scranton and Northumberland, Pennsylvania, and Utica, Binghamton, Oswego and Buffalo, in the State of New York. And it further admits and alleges that over such lines, since it has owned or leased the same, it has been engaged in interstate and foreign commerce as a common carrier of passengers and freight, especially anthracite coal not intended for its own use. It admits that it owns
122 a fleet of marine barges which carry anthracite coal from Hoboken, New Jersey, to points in New England, but denies that it operates the same.

It further admits that at various times commencing prior to 1860, this defendant has acquired by purchase and holds in fee simple a large acreage of lands containing or said to contain anthracite coal lying in said Lackawanna and Luzerne Counties, and has likewise acquired by lease coal underlying, or said to underlie, other acreage of lands in said counties, and that the aggregate of such acreage is some 15,000 acres of land; that approximately one-half of these were acquired after January 1st, 1874.

It does not know the exact acreage of such lands which contains coal. 1123

It further admits that upon the lands so acquired and held there are many collieries which have long been and now are being constantly operated by the defendant Railroad Company in its own name; that at all times coals therefrom have been mined and produced by this defendant and the full legal title thereto has been vested in it at all times prior to the loading thereof in cars at the breaker for transportation, and it alleges that prior to August 2nd, 1909, it not only mined and produced such coals, but transported the same to market, and there sold them, and that the legal title thereto was vested in this defendant up to the time of such sale thereof, but that since 1124
said time this defendant has sold and delivered such coals (except such part thereof as it consumed in its business as a common carrier or was locally consumed), at the breaker's mouth and before the transportation thereof began, to the defendant, The Delaware, Lackawanna and Western Coal Company, and it denies that the legal title thereto or any interest therein was vested in it at any time after such sale and delivery. It admits and alleges that during recent years the annual output of such collieries has been at the rate of approximately 8,000,000 tons, but it denies that such annual output has been at the rate of 10,000,000 tons, and it denies that the present output of said collieries will continue indefinitely. It admits that 1125
great quantities of such coals intended for sale and distribution in different States, not necessary or intended for this defendant's use in its business as a common carrier, have long been and now are loaded upon its cars at the mines or adjacent breakers and then carried by it in interstate and foreign commerce to various points outside of Pennsylvania; that part thereof moves to the North and West, and that part thereof, mostly smaller sizes, has been and is carried each year to Hoboken, New Jersey, on New York Harbor, and sold there, and that defendant intends to continue to transport such coals so produced not as

1126 heretofore, but as directed by the shipper thereof, but it denies that such tonnage so distributed is in an amount from 7,000,000 to 8,000,000 tons anually, and alleges that such tonnage is between 5,000,000 and 6,000,000 tons. It denies that the part thereof carried each year to Hoboken, New Jersey, approximates 3,000,000 tons in amount, and alleges that the same approximates 2,000,000 tons. It has no knowledge of the quantity sold there.

It admits that defendant has been accustomed to buy a large tonnage of the output shipped from the mines and breakers located along its lines which are owned and operated by others; that it has transported most of the same in interstate and foreign commerce. It denies, how-
1127 ever, that it has been accustomed to purchase almost the entire output of such mines and breakers, or that it has been accustomed to purchase seventy-five per cent. (75%) or more thereof, and it alleges that said percentage is much smaller.

It denies that anthracite coal is an article of prime necessity, but it admits that it is largely used for domestic purposes throughout the New England and Middle Atlantic States, and also in other sections of the Union and in Canada; that the smaller sizes are much in demand for steam purposes in and about New York City and other large cities in the East; that the source of the entire supply is in northeast Pennsylvania. It has no knowledge
1128 of the dimensions, quantity or quality of the area of unmined coal referred to in the petition. It admits that a portion of the total output of all the mines is and was in 1911 consumed at or near the collieries. The percentage thereof of the whole is not known to this defendant. It has no knowledge of the quantity of the output of the mines other than its own in the years referred to in the petition or in any other years, and it has no knowledge of the quantity thereof carried away over the lines of the railroads referred to in the petition, save that carried by its own railroad, or of the proportion of such total output transported and sold in interstate and foreign commerce.

As to the output of the mines which it carries, it admits 1129
that four-fifths thereof is and was in 1911 transported and sold in interstate and foreign commerce.

It has no knowledge of the proportion of the total shipments of anthracite moving by rail which is carried by other railroads to New York Harbor. It admits that of the total shipments of anthracite moving over its rails about 25 per cent. thereof is carried to tide. It denies that the rates for the transportation via the different railroads to New York Harbor are approximately the same.

This defendant has no knowledge of the extent of the tonnage sold in New York Harbor or of the relative importance of New York Harbor as a market or distributing point for coal, or as to whether prices prevailing there fix 1130
or regulate those in other markets.

It admits that the terminals of the railroads carrying such traffic to New York Harbor are at separate points on the Jersey side from Edgewater on the north to South Amboy on the south. It has no knowledge of the practices at other terminals in that regard, but it denies that at its New York Harbor terminal at Hoboken, New Jersey, through which tide water coal passes, all such coal of larger sizes is passed over screens or that all such coal is dumped into barges. All of it is weighed; some is screened and some is dumped into barges and some floated in the cars without screening or dumping to various points in the harbor.

1131

It has no knowledge of the practices or conduct of other railroad companies or of coal companies in that regard, but it denies that it has engrossed the output of the collieries, or that it has gained control over the output of most of the mines served by it in the sale of the same or otherwise, or that the f. o. b. prices of anthracite at the various terminals in New York Harbor are made or controlled by the defendant railroad. It admits that the quantity of the various sizes of anthracite sold in New York Harbor and the amount of money received therefor are reported monthly by the sellers to a Bureau of Statistics sustained

1132 by them jointly, and that the average prices received for all coal so sold is then reported to all of such sellers. And it alleges that the statistics of said bureau, as they are made, are published and circulated throughout the country. They are used by the Government as a basis for its census and they are reported to the United States Commissioner of Labor, and furnish the basis upon which he reports the average prices of coal at New York Harbor under the Anthracite Strike Commission Award, so that miners may receive the sliding scale of wages under such award.

This defendant has nothing to do with the sale of coal in New York Harbor, or elsewhere, except the sale to the defendant Coal Company at the breakers' mouth as herein-
1133 before set forth, and sales to employees at the mines, and has no knowledge of the prices now quoted and demanded for anthracite f. o. b. New York Harbor.

It admits and alleges that its present tariff schedules fix the rates for the transportation of anthracite from mines to tide (with the exception of from Taylor to tide) as follows:

$1.58 per ton for Prepared Sizes.
$1.43 per ton for Pea.
$1.28 per ton for Buckwheat.
$1.13 per ton for Rice and Barley.

It denies that the said charges have been or now are
1134 high or excessive.

Fourth. This defendant admits and alleges that prior to August 2nd, 1909, the defendant Railroad Company, as it was authorized and empowered to do by its charter as aforesaid, mined coals from its own collieries and whilst holding the full legal title thereto transported the same to market in different States for sale therein; that for many years prior to said date it purchased from time to time as the same was offered for sale, at the breakers' mouth, as it was empowered to do by its charter as aforesaid, coals produced by anthracite mines not owned by it, and it has also sold such coals so purchased by it

in the market in different States. It denies, however, that 1135
the coals so purchased constituted almost the entire production of such mines not owned by it, and it alleges that the amounts so purchased constituted but a small part thereof.

It further admits that in order to economically and expeditiously transport said coals and such other coals as were or should be offered to it for transportation over its lines, this defendant constructed at points in different States adjacent to or connected with its tracks, extensive terminal facilities, storage yards, depots, docks, wharves and transfer trestles and other accessories essential or convenient for carrying on such transportation, and it also constructed other coal trestles, sales yards and accessories 1136
essential or convenient for carrying on the business of the sale of its coals, which it used exclusively. It denies, however, that its said use of such facilities or that its financial ability, or its power or position as a common carrier put other producers and operators at a disadvantage when seeking to market their coals in competition with it, or that they were otherwise put to disadvantage, and it alleges that such other producers and operators did freely and successfully compete with this defendant in the various markets.

It admits, as it has heretofore admitted, that it has and does purchase a portion of the output of mines and operations owned and worked by others along its lines, but it 1137
denies that it has or does purchase so much of such output as added to its own gave it the disposition of more than ninety per cent. of the total production. It alleges that such percentage of such total production is much smaller than ninety per cent. It denies that it was enabled to or did purchase such production of others in consequence of the construction and use of said facilities or of its power or position as a common carrier. It denies that it has or ever had dominance of the market of such production along its lines or a monopoly thereof, or the power to fix prices at any point on its lines or elsewhere. It has no

138 knowledge whether but for such purchase of coal as aforesaid the same would have been sold in interstate and foreign commerce in competition with the railroad, or whether or not in the future, if not so purchased, said coal will be sold in competition. It admits that the business of the railroad has been profitable and that its financial strength is great, but it says that such profit has not been undue or unwarranted.

It admits that the majority of the stock of said defendant railroad is now and has been for some time held by a limited number of individuals and interests, whether by less than twenty-five individuals and interests, it has no knowledge. It denies that said individuals and interests
139 act in concert and unity, except as they do so in accordance with the provisions of the charter and by-laws of said defendant company. It denies that a still smaller number have and do dominate its affairs and it alleges that its affairs are and have been dominated and controlled by a majority of its stockholders at the time being, as provided by law.

Fifth. Further answering, it admits and alleges that Section 1 of the Act of Congress, approved February 4th, 1887, entitled "An Act to Regulate Commerce," as amended by the act approved June 29th, 1906, provides, among other things, as set forth in the petition herein in Subdivision "V" thereof, and that under the provisions thereof, it be-
140 came unlawful for the defendant to transport, in interstate and foreign commerce, coal purchased by it or produced by the mines which it owned and operated, while it was interested in such coal during the transportation thereof unless the same was intended for its use in its business as a common carrier.

The defendant further alleges that because of the inhibitions of such section, it became necessary for the defendant railroad company to sell all coal purchased or produced by it prior to the transportation thereof.

It admits that with its knowledge and assent but not at

its direction or by representatives or nominees of it or of those controlling its affairs, The Delaware, Lackawanna and Western Coal Company was organized. It admits that it was expected that such coal company would enter into a contract for the purchase of the coal of the defendant, and it admits that the dividend of fifty per cent. alleged in the petition herein was declared by the Directors of the defendant, among other purposes, to enable its stockholders to subscribe for stock in the Coal Company if they desired so to do. 1141

It alleges that The Delaware, Lackawanna and Western Coal Company was organized under and pursuant to the direction of counsel employed by persons acting solely on behalf of said Coal Company, some of whom were interested by stock ownership or otherwise in this defendant, and some of whom were not. That neither the incorporators nor the Board of Directors of the said Coal Company were intended to be nor were they ever in fact, under the control of the Railroad Company, nor have they ever been the nominees or instruments of those in control of the Railroad Company. That said Coal Company was organized in good faith for the purpose of engaging in the business of the purchase and sale of anthracite coal with the expectation of obtaining a contract with the defendant Railroad Company for the purchase of its coal, and since the date of its organization it has been controlled in accordance with the provisions of law and its by-laws by the wishes of a majority of its stockholders acting through a Board of Directors elected by a majority of the votes thereof. 1142 1143

It admits and alleges that on or about the first day of July, 1909, the communication set forth in Subdivision V of the petition herein addressed to the stockholders of The Delaware, Lackawanna and Western Railroad Company was mailed by the Treasurer of The Delaware, Lackawanna and Western Railroad Company to the stockholders thereof, and that the same contained information which the Treasurer of The Delaware, Lackawanna and Western Railroad Company desired to communicate to the stockholders there-

144 of, and also information which counsel for The Delaware, Lackawanna and Western Coal Company requested the Treasurer of The Delaware, Lackawanna and Western Railroad Company to include in his circular on behalf of The Delaware, Lackawanna and Western Coal Company. It also admits that most of the railroad stockholders in substantially the amount alleged in the petition subscribed for stock of The Delaware, Lackawanna and Western Coal Company, and that on or about August 2nd, 1909, the contract, Exhibit "A," was entered into between the two defendants, and that upon the execution thereof the defendant Coal Company took possession of the mined coal theretofore owned by the railroad and entered upon the
145 use of the facilities which it acquired under the terms of said contract, and that the terms of said contract have been and are now being carried into effect in all respects.

It denies that immediately or at any time the two corporations with all their business and assets came into and have ever since remained under the substantial ownership or immediate control of the same individuals.

It admits that William H. Truesdale, President, and Edward E. Loomis, Vice-President of the railroad, have always been two of the Directors of the Coal Company and the latter always its President.

It admits and alleges that since August 2nd, 1909, the Railroad Company has continued to buy some of the output
146 of some of the mines and operations belonging to others located along its lines, amounting in 1911, to about 1,500,000 tons, as hereinbefore set forth, and that it actually and in good faith sells and delivers the same to the defendant Coal Company and the defendant Coal Company actually and in good faith buys and takes delivery and possession thereof along with the product of the Railroad Company's mines, amounting annually to about five or six million tons, as hereinbefore set forth and alleged, and it denies that such sale, purchase or delivery is or has been ostensible or but a form as alleged in the petition.

It further admits and alleges that so much of its coals as

the Railroad Company needs and uses in its own business as a common carrier, about 1,450,000 tons annually, is reserved and not delivered to its co-defendant. 1147

It further admits and alleges that the defendant Coal Company causes most of the said coal so purchased and delivered to it to be transported in interstate and foreign commerce by the defendant Railroad Company and by it in connection with other carriers, and that said Coal Company is carrying on the business of selling said coals in its own name at sundry points in different States and in Canada, reached by this defendant or by such other carriers, all by and in accordance with the directions of the Coal Company and by the methods adopted by it and not in accordance with any agreement with this defendant and not subject to the control or interference of this defendant. Defendant further admits and alleges that, as in the past, it intends to continue to transport such coals as are offered to it for transportation by the defendant Coal Company or by any other shipper, in accordance with the directions of such shippers and the law of the land and not otherwise. 1148

Further answering, it says it has no knowledge of the amount of the annual sales of the Coal Company or of the amount thereof inside or outside of the State of Pennsylvania. It admits that the coals which it transports for the Coal Company as aforesaid are not transported for use of the Railroad Company in its business as a common carrier.

It denies that the defendant Coal Company acquired or has maintained or now maintains a monopoly of the sale of coal produced or sold along this defendant's railroad, or that it has dominated the market at any point, or that effective competition with it is impossible. 1149

Sixth. Answering the allegations contained in Subdivision "VI" of said petition, this defendant says that it has no knowledge as to whether changes have occurred in ownership of stock of the defendant Coal Company. It has no knowledge of the ownership of stock of said Coal Company.

Defendant's business is owned by itself and not by any

150 group of stockholders, and its affairs and business are managed, directed and controlled by the holders of a majority of this stock at any time being and not by any smaller group or body of individuals. It has no knowledge of the individuals who control or who have controlled the business of the Coal Company.

It has no knowledge of the result of the operations of the Coal Company, whether profitable or otherwise, or of the dividends paid or surplus accumulated by it. It denies that it gave the sale's contract referred to in the petition herein to the Coal Company with any intent that the same should be unduly or unreasonably profitable, but says that it made and entered into said contract for the purpose and with the
151 intent hereinbefore set forth, and with the further purpose and intent of disposing of its coal to the best advantage under the existing circumstances, and of thereby conserving the interests of its stockholders.

It denies that the affairs of the defendants herein have been carried on in accord and unison. The business of this defendant has been carried on with the intent and for the purpose of securing to it and its stockholders the best result from the proper and lawful use and administration of its property without interference with or intervention in the affairs of the defendant Coal Company, and without interference with its affairs on the part of the Coal Company.

It denies that this defendant organized the defendant
152 Coal Company, or that it ever was its purpose or the purpose of those who have controlled or do control defendant to use the Coal Company as a mere instrumentality or that the Coal Company has been a mere instrumentality, whether for retaining under the direction of the defendant Railroad Company or for its profit, the business of selling coal therefore carried on by it or otherwise, or that Exhibit "A" has or has had any such effect. As stated heretofore, since August 2nd, 1909, this defendant has had no direction or control over the business of selling coal. It denies that the Coal Company is or ever has been subservient to the will or direction of the Railroad Company, or of those who control it.

It denies that the majority in interest of the stockholders 1153
of this defendant control the Coal Company or elect its officers or determine its policies, or will always or for any time constitute the dominant or majority stockholders of the Coal Company.

It denies that the business of the Coal Company would be destroyed by a termination of the contract, Exhibit "A." It denies that defendant Railroad Company or those who control it have the power to or could take away or destroy the business of the defendant Coal Company, whether on six months' notice or otherwise.

It denies that the defendant Coal Company or the contracts or arrangements existing between it and this defendant are either or any of them subterfuges or devices or dam- 1154
aging to the public, as alleged. It denies, as it has heretofore denied, that the Coal Company has acquired a monopoly of the sale of coal produced along the line of this defendant, or elsewhere. It says, as it has heretofore said, that this defendant lawfully and in good faith sells and delivers. f. o. b. cars at the mines all coal which it mines or produces or purchases (except the part retained by it for its use and the part sold to employees) before transportation begins, and that thereby the complete title thereto passes to the vendee thereof, and that thereby this defendant dissociates itself from such coals and from all interest direct or indirect therein.

It further denies that the contract, Exhibit "A" set forth 1155
in the petition, hinders or prevents this defendant from freely fixing its rates for the transportation of coal or that it introduces a factor into the determination of the question relating thereto which may not be considered consistent with the rights of the public or which tends to keep such rates high. Such rates are not high. It denies that such contract is a barrier against reductions in the Railroad Company's freight rates, or that the same is an inducement to higher rates, or that the same is in restraint of interstate or foreign trade or commerce.

It denies that the purchase of coal by defendant for re-

1156 sale is incompatible with its duties as a public carrier or that the tendency thereof is to produce a monopoly or to hinder or restrain interstate or foreign commerce in coals.

Seventh. This defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
By ARTHUR D. CHAMBERS,
Secretary.

[SEAL.]

William S. Jenney,
1157 Solicitor and Counsel for said Defendant.

Answer of Defendant Coal Company.

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA,
Petitioner,

against

THE DELAWARE, LACKAWANNA AND WESTERN
1158 RAILROAD COMPANY, and THE DELAWARE,
LACKAWANNA AND WESTERN COAL COMPANY,
Defendants.

In Equity No.

Answer of the Defendant, The Delaware, Lackawanna and Western Coal Company.

Defendant, The Delaware, Lackawanna and Western Coal Company, answers the petition herein, as follows:

First. This defendant admits that this proceeding is brought under the directions of the Attorney General of the

United States. It denies that it is or has been violating any of the provisions of law referred to in the petition or any law. 1159

Second. Further answering, this defendant admits and alleges that it is a corporation duly organized and existing under the laws of the State of New Jersey, with its principal office at Hoboken in said State; that its outstanding capital stock is $6,590,700.00. It further admits and alleges that among the objects for which it was established and the powers granted to it are those set forth in Paragraph "II" of the petition.

It further admits and alleges that it is now and since August 2nd, 1909, has been engaged in the business of dealing in anthracite coal at sundry places, towns and cities, 1160
including Hoboken, New Jersey, within the States of New Jersey, Pennsylvania and New York, and other States and in Canada, which are reached either by defendant Railroad Company or by defendant Railroad Company in conjunction with its connecting carriers; that at Hoboken, New Jersey, is situated the New York harbor terminals of the defendant Railroad Company to which it constantly transports from the mines in Pennsylvania large quantities (not in an amount as great as 3,000,000 tons per annum as alleged) of the coals accepted there by the defendant Coal Company under the terms of the agreement, Exhibit "A," attached to the petition. It also has agents and offices and carries on business in other states than the three herein 1161
specifically mentioned.

Defendant further answering, admits and alleges that The Delaware, Lackawanna and Western Railroad Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with offices at Scranton, in New York City, and within this judicial district; that it has by its charter and franchises the power and authority set forth in Paragraph "II" of the petition; that it operates as one system lines of railroad in the States of New Jersey, Pennsylvania and New York,

62 connecting among other places therein Hoboken, Scranton and Northumberland, and Utica, Binghamton, Oswego and Buffalo; also many lateral and branch lines, some of which reach the anthracite mines owned by the defendant Railroad Company, and also some owned by others lying within the Counties of Luzerne and Lackawanna, and in the Wyoming Region of the anthracite fields. It has no knowledge of the ownership of such lines or of the contracts or arrangements under which the same are operated, or the length of time during which such ownership, contracts and arrangements have existed. It further admits that over such lines the defendant Railroad Company is and has been engaged (for how long this defendant does not know) in
163 interstate and foreign commerce as a common carrier of passengers and freight, especially of anthracite coal not intended for its own use. It has no knowledge of the ownership or operation of marine barges referred to in Paragraph "II" of the said petition.

It has no knowledge of the acquisition of coal lands by the defendant Railroad Company or of the extent of its holdings thereof. It admits that the defendant Railroad Company is and has been constantly operating collieries in the coal fields of Pennsylvania. This defendant does not know what has been or is the annual output thereof. It admits that a large quantity of such output intended for sale and distribution in different States (not 7,000,000
1164 to 8,000,000 tons annually as alleged, but 5,000,000 to 6,000,000 tons anually) not necessary or intended for the use of the defendant Railroad Company in its business as a common carrier, has been and now is loaded upon its cars at the breakers and then carried by such railroad company in interstate and foreign commerce to various points outside of Pennsylvania. Such has been the course of conduct of said defendant Railroad Company since August 2nd, 1909; it has no knowledge thereof prior to such date. It further admits that since August 2nd, 1909, part of the output so carried has moved and now moves to the North and West and part thereof (not as much as 3,000,000 tons as

alleged), mostly smaller sizes, has been and is carried to 1165
Hoboken, New Jersey, on the New York Harbor, and sold there. It has no knowledge of the course which defendant Railroad Company intends to pursue in the future in regard to such transportation.

Further answering, it admits that since August 2nd, 1909, the defendant Railroal Company has been accustomed to buy some of the output shipped from some of the mines and breakers located along its line which are owned and operated by others. Such has been the course or conduct of the defendant Railroad Company since August 2nd, 1909. It has no knowledge of the practices of said defendant in this regard prior to said date, or of the proportion of the output of such mines and breakers which 1166
defendant has purchased, or of the extent of the tonnage purchased in the year 1911. It admits that the defendant Railroad Company has transported most of the tonnage so purchased in interstate and foreign commerce. It has no knowledge of the course in that regard which defendant Railroad Company intends to pursue in the future.

Third. This defendant denies that anthracite coal is an article of prime necessity, or that the same is in general use for domestic purposes throughout New England and Middle Atlantic States. It admits that anthracite is largely used for domestic purposes at many points in New England and the Middle Atlantic States, and that it is also largely burned in other sections of the Union and in Can- 1167
ada; that the smaller sizes are much in demand for steam purposes in and about New York City, Boston and other large eastern cities. It admits that the anthracite which it handles is derived solely from the Wyoming coal field in northeastern Pennsylvania. It has no knowledge as to whether the source of the entire supply is in northeastern Pennsylvania, or as to the extent of the area of unmined coal referred to in the petition. It admits that the anthracite fields are divided for trade purposes into the Wyoming, Lehigh and Schuylkill regions.

168 Further answering, this defendant says that it has no knowledge of the annual output of the mines, or of the proportion thereof consumed at or near the collieries, or of the disposition made of the remainder, except as to that part thereof handled by it.

This defendant admits that with the exception of the Delaware & Hudson Company, all of the railroads named in Paragraph "III" of said petition reach New York Harbor; that the terminals of the railroads carrying anthracite coals to New York Harbor are at separate points on the Jersey shore from Edgewater on the north to South Amboy on the south.

It has no knowledge of the proportion of the total ship-
169 ments of anthracite moving by rail which is carried to New York Harbor, or which is sold there, or of the total tonnage annually sold there.

It denies that the rates for the transportation of coal from the mines to New York Harbor via the routes of the various interstate carriers are approximately the same, or that New York Harbor is the most important market for anthracite coal, or that the same is the chief distributing point therefor, or that the prices prevailing there fix or regulate those in other markets.

Defendant has no knowledge of the practices of other carriers or coal companies in that regard, but it denies that all of the anthracite coal which it ships to New York
170 Harbor is dumped into barges or quoted or sold f. o. b. thereof. It admits and alleges that all of such coal is weighed at the New York Harbor terminals of the transportation company carrying it; that part thereof is screened and dumped into barges; that part of it is floated in the cars to various points in the harbor without screening or dumping, and a part is weighed and dumped into barges, quoted and sold f. o. b. thereof.

Defendant has no knowledge of the practice or conduct of railroad companies or other coal companies in that regard, but it denies that it engrosses or has engrossed the outpnt of the collieries, or that it has gained control of the

output of the mines and the sale of the same, or that it 1171
makes or controls the prices of anthracite at New York Harbor, or elsewhere.

It admits that the quantity of coal sold at New York Harbor and the amount received therefor are reported monthly by the sellers to a bureau of statistics sustained by them jointly, and that the average selling price of all such coal is then sent out to such sellers.

Further answering, it denies that the prices quoted and demanded for anthracite f. o. b. New York Harbor are uniform or substantially uniform. It admits and alleges that the prices now quoted and demanded by it for anthracite f. o. b. New York Harbor are from $5.25 per ton for certain prepared sizes down to $1.85 per ton for the sizes known 1172
as barley. It denies that such prices depend upon freight charges, or that such prices would vary with such charges under any circumstances. It denies that the present tariff schedules of the carriers fix such rates at the amounts set forth and alleged in the petition.

Fourth. Answering the allegations in Paragraph "IV" of the petition contained, this defendant says that it has no knowledge of the practices or conduct of the defendant Railroad Company prior to August 2nd, 1909, or of the effect or consequences thereof, or of the result of the business of the defendant Railroad Company, or of its strength financially, or of the ownership or holdings of stock in the defendant Railroad Company, or of the individuals and 1173
interests which dominate or control its affairs, or of the manner or method of conducting its business alleged in said paragraph.

Fifth. Further answering, this defendant admits that Section 1 of the Act of Congress, approved February 4th, 1887, entitled "An Act to Regulate Commerce" as amended by the Act approved June 29th, 1906, provides, among other things as set forth in Paragraph "V" of the petition herein. Further answering, defendant says that it has no knowledge of the result of the business of the defendant

1174 Railroad Company, or of the desires, purposes or determination of those dominating or controlling it.

It alleges that The Delaware, Lackawanna and Western Coal Company was lawfully and in good faith organized, with the share capital alleged in Paragraph "V" of the petition under and in pursuance of directions of counsel acting in its behalf for the purpose of engaging in the business of merchandising coal, and with the purpose in view of contracting with the defendant Railroad Company for the purchase of its coal. From the beginning it has been controlled by a majority in interest of its stockholders acting through a Board of Directors duly elected and constituted by a majority of the votes of such stockholders—
1175 all in accordance with the provisions of the law and of its by-laws. It denies that any of the incorporators, or any of the Board of Directors of this defendant were ever the nominees or representatives or instruments or ever under the control of the defendant Railroad Company, or those in control thereof.

It denies that its shares were intended for distribution among stockholders of defendant Railroad Company, pro rata or otherwise. It denies that its capitalization is large.

This defendant admits and alleges that on or about July 1st, 1909, the Treasurer of the Delaware, Lackawanna and Western Railroad Company mailed the communication set forth in Subdivision "V" of the petition herein to the
1176 various stockholders of such company. It has no knowledge of the stockholders of defendant Railroad Company who did or did not subscribe for its stock.

It admits that on or about August 2nd, 1909, it entered into the contract, Exhibit "A;" that on the execution thereof this defendant entered into possession of the mined coal of the defendant Railroad Company and entered upon the use and possession of the facilities acquired by it under the terms of said contract, and that the provisions of Exhibit "A" have been and now are being carried into effect.

It denies that immediately upon the execution of said

contract, or at any time, this corporation, or its business 1177
or assets, came into the ownership of any individual or group of individuals, or into the control of any individual or group of individuals except as hereinbefore admitted and alleged.

It admits that William H. Truesdale, President, and Edward E. Loomis, Vice-President of the defendant Railroad Company have always been two of the Directors of this defendant, and the latter always its President.

The defendant Coal Company has no knowledge except as hereinbefore admitted of the conduct of the defendant Railroad Company in respect of the purchase of coal belonging to others, or of the tonnage of such purchases in 1911. It alleges that such coal as is turned over to it by 1178
the defendant Railroad Company is actually and in good faith sold and delivered to it, and this defendant actually and in good faith buys and takes delivery, and possession thereof, and that the amount thereof so sold and delivered amounts annually to from 6,000,000 tons to 8,000,000 tons. It denies that such sale, purchase or delivery is or has been ostensibly merely or but a form, as alleged in the petition.

This defendant further admits and alleges that most of the coal so sold and delivered to it by the Railroad Company, it causes to be transported in interstate and foreign commerce by the defendant Railroad Company, and by it and its connecting carriers, and that it is carrying on the business 1179
of selling the same at the sundry points in different States and in Canada, reached by the defendant Railroad Company and by its connecting carriers under directions and by methods of this defendant, and not in accordance with an agreement with the defendant Railroad Company, or by methods adopted by it, and that it intends to continue such course in the future.

It admits and alleges that the annual sales of the Coal Company amount to from 6,000,000 to 8,000,000 tons, all secured from the defendant Railroad Company and trans-

1180 ported by it as aforesaid. It admits that four-fifths of such sales are and have been outside of Pennsylvania, and that the coal so secured is not transported for use by such railroad in its business as a common carrier.

This defendant denies that it acquired or has maintained or now maintains a monopoly of the sale of coal produced along defendant Railroad Company's railroad or elsewhere, or that it has dominated the markets at any point on the railroad of the defendant Railroad Company or elsewhere, or that effective competition with it is or has been impossible. And it alleges that many producers and vendors of coal have competed and do freely compete with it in the markets at all of such points.

1181 Sixth. Answering the allegations in Paragraph "VI" of said petition contained, this defendant admits and alleges that there have been many changes in the ownership of its stock since its organization. It has no knowledge as to whether its stockholders and those of the defendant railroad who own and control not less than 85 per cent. of the shares of both have been or now are the same individuals or their representatives. It has no knowledge of the ownership of the stock in the defendant Railroad Company or of the individuals or interests who dominate or control the affairs of such company.

It admits that the operations of the Coal Company have 1182 been profitable, but it denies that such profits have been immense or undue or unwarranted or that they should be so was intended by those who procured its organization. It further admits that dividends have been paid at the rate of 10 per cent. per annum and that a surplus exceeding $3,500,000 has been accumulated.

It denies that its affairs have been carried on in accord and unison with those of the defendant Railroad Company or with the purpose or effect of enriching the shareholders of the defendant Railroad Company.

It denies that the Coal Company is or has ever been sub-

servient to the will and direction of the defendant Railroad Company or those who control the latter or that those who control the defendant Railroad Company elect this defendant's officers or determine its policies, or that its business may be destroyed by them. It denies that the organization of this defendant or any of the contracts or arrangements existing between the parties defendant hereto are or have been subterfuges or devices as alleged in the petition, or are or have been damaging to the public. 1183

It denies, as it has heretofore denied, that this defendant has acquired a monopoly of the sale of coal produced along the line of the defendant Railroad Company or elsewhere.

It denies that at any time during the course of transportation the carrier has any interest in any of the coal accepted and purchased by this defendant, and delivered to it as aforesaid, and it alleges that it in good faith buys and accepts delivery f. o. b. cars at the mines of all coals offered to it by the defendant Railroad Company before the transportation thereof begins, and that thereby the complete title thereto passes to this defendant and remains with it during such transportation. 1184

This defendant denies that the contract, Exhibit "A" in anywise hinders or prevents the free fixing of rates for the transportation of coal, or that it introduces a factor into the determination of questions relating thereto which may not be considered consistently with the rights of the public, or that the same introduces a factor tending to keep such rates high or that such contract is a barrier against reductions in the Railroad Company's freight rates or that the same is an inducement to higher rates or that the same is in restraint of interstate or foreign trade or commerce. 1185

It further denies that the price of coal at New York harbor is in any substantial degree affected by the freight rate, or that the higher the freight rate from the mines to New York harbor, the higher the prices will be; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and

prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE DELAWARE, LACKAWANNA
AND WESTERN COAL COMPANY,
By J. J. A. OWENS,
Secretary.

[SEAL.]

John G. Johnson,
Solicitor and Counsel of said Defendant.

Subpœna ad respond.

(Filed February 25, 1913.)

UNITED STATES OF AMERICA,
District of New Jersey, ss.

To the Delaware, Lackawanna & Western Railroad Company and the Delaware, Lackawanna & Western Coal Company, greeting:

We command you that you appear in manner and form required by law in our District Court of the United States for the District of New Jersey, as a court of chancery, within twenty days from date of service hereof upon you, to answer to a bill of complaint exhibited against you in our said court by the United States of America, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty that may fall thereon.

Witness the Honorable Joseph Cross, judge of said court, this 13th day of February, 1913.

[SEAL.]

GEORGE T. CRANMER, *Clerk.*
By C. S. CHEVRIER, *Deputy.*

Memorandum.—The defendant is to file his answer or other pleading in the suit in the clerk's office, Trenton, N. J., on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

398 Served the within subpœna ad respond on the defendant the Delaware, Lackawanna & Western R. R. Co. at Hoboken, N. J., on the 15th day of Feby., 1913, by delivering to and leaving with H. G. Cave, chief clerk in the office of the superintendent of defendant company, personally, a copy thereof, and at the same time showing said person this original and informing said person of its contents.

THOMAS J. ALCOTT,
Marshal, D. N. J.,
By E. R. SEMPLE, *Chief Deputy.*

Served the within subpœna ad respond upon the Delaware, Lackawanna & Western Coal Company by delivering and leaving a true copy thereof with E. J. Johnson, personally, superintendent of the said company, at Hoboken, N. J., this 20th day of February, 1913.

THOMAS J. ALCOTT,
United States Marshal,
Per LOUIS G. BEEKMAN,
Deputy U. S. Marshal.

399 In the District Court of the United States for the District of New Jersey.

UNITED STATES OF AMERICA, PETITIONER, *against* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD Company, and the Delaware, Lackawanna & Western Coal Company, Defendants.	In equity.

Order to take depositions.

(Filed Oct. 10, 1913.)

The petitioner having applied for the entry of an order permitting the depositions of the witnesses hereinafter named to be taken before an examiner,

Now upon reading and filing the affidavit of Frederic R. Coudert, verified October 8th, 1913, and the stipulation of all parties hereto dated October 7th, 1913, and good and exceptional cause for the making of this order having been duly shown,

On motion of Frederic R. Coudert, Esq., special assistant to the Attorney General, and counsel for the petitioner herein, it is

Ordered that the depositions of William H. Truesdale, Edward E. Loomis, Arthur D. Chambers, William S. Jenney, J. J. A. Owens, and such other officers, directors, or employees of either of the defendants as may be produced be taken before Richard S. Wilson, Esq., who is hereby appointed an examiner for that purpose; and it is further

400 Ordered that such depositions may be taken in the city of New York at the office of either of the defendants or of their counsel, or at such other place as may be agreed upon by the parties or fixed by the examiner, and it is further

Ordered that three days' notice be given of the time and place when the taking of such depositions will be commenced, and that thereafter the parties shall proceed with the taking thereof with all diligence upon such subsequent dates as may be fixed by the examiner, and that said depositions be completed and filed with the clerk of this court within thirty days from the date of this order.

JOHN RELLSTAB, *Judge.*

Dated October 10, 1913.

401

Certificate of public importance.

(Filed Jan. 10, 1914.)

In the District Court of the United States for the District of New Jersey.

UNITED STATES OF AMERICA, PETITIONER,
vs.
THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND the Delaware, Lackawanna & Western Coal Company.

In equity.

To the clerk of said court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the United States against the Delaware, Lackawanna & Western Railroad Company and the Delaware, Lackawanna & Western Coal Company, under the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, as amended, and under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; and that said suit is, in my opinion, a case of general public importance.

I therefore request that in conformity with the act of Congress approved February 11, 1903 (32 Stat., 823), as amended by the act of June 25, 1910 (36 Stat., 854), providing for the expedition of suits brought under the above mentioned acts of Congress of February 4, 1887, as amended, and of July 2, 1890, you will file this certificate among the records of the above-entitled cause and immediately furnish a copy thereof to each of the circuit judges of the Third Circuit,

402 to the end that said case shall be given precedence over others, and in every way expedited, and be assigned for hearing at the earliest practicable date before not less than three circuit judges of said circuit, as provided by the said act of February 11, 1903, as amended June 25, 1910.

J. C. MCREYNOLDS,
Attorney General.

WASHINGTON, D. C., *January 7, 1914.*

403 In the District Court of the United States, District of New Jersey.

UNITED STATES *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD Company, and Delaware, Lackawanna & western Coal Company.	In equity. No. 297.

Before Gray, Buffington, and McPherson, circuit judges.

Final hearing.

McPherson, circuit judge:

This proceeding is based chiefly upon the commodities clause (act of June 29, 1906, U. S. Comp. Stat., Supp. of 1911, p. 1287), which forbids any railroad company to carry in interstate commerce after May 1, 1908—

404 "* * * any article or commodity other than timber and the manufactured products thereof, manufactured, mined, or produced, by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

The Government's contention is that the Delaware, Lackawanna & Western Railroad Company is violating this statute because it is carrying in such commerce anthracite coal originally produced by its own mines in Pennsylvania or bought from other mine owners in that State, the Government alleging that during such carriage the railroad continuously retains some kind or degree of interest or ownership in the coal. The railroad denies that any such interest or ownership exists, averring that the coal is sold in good faith before the carriage begins; the other defendant, the Delaware, Lackawanna & Western Coal Company, being the buyer under a contract that will be referred to hereafter. The Government attacks this contract, declaring it to be merely a subterfuge and to have no effect in divesting or modifying the railroad's title. The questions raised by the record are of very great importance, and it is therefore a matter for much satisfaction that the Supreme Court has already considered the general subject, and has laid down the rules by which the controversy must be decided. We think it desirable to preface the discussion by stating in sufficient outline (even at the risk of seeming diffuse) what has been said and done in two previous suits where the meaning and effect of the clause under consideration were directly involved.

In June, 1908, the defendant railroad and five other coal-carrying roads were brought into the Circuit Court for the Eastern
405 District of Pennsylvania, charged with violating the statute.

The companies appeared and defended, and the cases were argued upon the several bills or petitions and the answers thereto, no testimony having been taken. In September of that year the Circuit Court dismissed the proceedings, one of the judges dissenting. The majority opinion (164 Fed., 215, et seq.) was put upon the ground—we state it briefly, and in general terms—that under the proper construction of the statute a railroad was forbidden to carry its own coal to market, and was thus deprived of its property in violation of the fifth amendment to the Federal Constitution. The dissenting opinion rests upon the propositions that the power to regulate commerce includes the power to regulate the carrier and that commerce might be lawfully regulated by ordaining that a public carrier should not also be a private shipper. The cases were then appealed to the Supreme Court, and were decided by that tribunal early in May, 1909: United States v. Delaware & Hudson Co., 213 U. S., 367, et seq. The opinion shows that the court did not pass upon the differing views of the circuit judges and did not find it necessary to discuss the fifth amendment. But the Government's contention concerning the scope and meaning of the clause was stated, and the far-reaching consequences of such contention were recognized. The present Chief Justice (who wrote the opinion of the court) declared (p. 406) that—

"* * * if the contention of the Government as to the meaning of the commodities clause be well founded, at least a majority of the court are of the opinion that we may not avoid determining the following grave constitutional questions: 1. Whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production, or ownership of an article or commodity, not becauce of some inherent quality of the commodity, but simply because it may become the subject
406 of interstate commerce. 2. If the right to regulate commerce does not thus extend, can it be impliedly made to embrace subjects which it does not control, by forbidding a railroad company engaged in interstate commerce from carrying lawful articles or commodities, because, at some time prior to the transportation, it had manufactured, mined, produced, or owned them, etc.? And involved in the determination of the foregoing questions we shall necessarily be called upon to decide, (a) Did the adoption of the Constitution and the grant of power to Congress to regulate commerce have the effect of depriving the States of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities, a power which the States from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several States have been developed, their enterprises fostered, and vast investments of capital have been made possible? (b) Although the Government of the United States, both within its spheres of national and local legislative power, has in the past for public purposes, either expressly or impliedly, authorized the manufacture, mining, production, and

carriage of commodities by one and the same railway corporation, was the exertion of such power beyond the scope of the authority of Congress, or, what is equivalent thereto, was its exercise but a mere license, subject at any time to be revoked and completely destroyed by means of a regulation of commerce?"

Upon these serious questions, however, the court intimated no opinion, because an analysis of the clause and the ascertainment of its true meaning thereby rendered such an opinion unnecessary. Without following the analysis, it is enough to say that the court did not approve either of the constructions maintained in the opinions of the Circuit Court, but reached its own conclusions on the subject, stating the true meaning of the statute to be as follows (p. 415):

407 "We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities under the following circumstances and conditions:

"(a) When the article or commodity has been manufactured, mined, or produced by a carrier or under its authority, and at the time of transportation the carrier has not in good faith before the act of transportation dissociated itself from such article or commodity; (b) when the carrier owns the article or commodity to be transported in whole or in part; (c) when the carrier at the time of transportation has an interest, direct or indirect, in a legal or equitable sense, in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced, or owned, etc., by a bona fide corporation in which the railroad company is a stockholder."

In the Circuit Court no testimony had been taken, but the controversy had been heard upon the pleadings, and mainly for this reason the Supreme Court did not give particular directions concerning each defendant, but remanded with general instructions that such further proceedings be taken as should be necessary to apply and enforce the statute interpreted as just set forth.

After the cases had been sent back for further proceedings, the Government, in March, 1910, asked leave to amend its charge against the Lehigh Valley Railroad Company, one of the six roads originally attacked. This amendment was afterwards summarized by the Supreme Court in 220 U. S., at page 268, as follows:

"In substance it was avered that as to this particular coal company the railroad company was not only the owner of all the stock issued by the coal company, but that the railroad company so
408 used the power thus resulting from its stock ownership as to deprive the coal company of all real independent existence and to make it virtually but an agency or dependency or department of the railroad company. In other words, in great detail facts were averred which tended to establish that there was no distinction in practice between the coal company and the railroad company, the latter using the coal company as a mere device to enable the railroad

company to violate the provisions of the commodities clause. It was expressly charged that in consequence of these facts:

"'The coal company is not a bona fide mining company, but is merely an adjunct or instrumentality of the defendant. The defendant is in legal effect the owner of and has a pecuniary interest in the coal mined by the coal company, and which is transported by the defendant.'

"Not only was it thus charged that the railroad company used its stock ownership to so commingle the operations of the affairs of the mining company with its own as to render it impossible to distinguish as a matter of fact between them, but it was moreover expressly in substance charged that exerting its influence as the owner of all the stock of the coal company the railroad company caused the coal company to buy up all the coal produced by other mining companies in the area tributary to the railroad and fixed the price at which such coal was bought so as to control the same and the transportation thereof and establish the price at which the coal thus ostensibly acquired by the coal company by purchase should be sold when it reached the seaboard.

"It was charged that by these abuses the production, shipment, and sale of all the coal within the territory served by the railroad company was brought within the dominion of that company practically to the same extent as if it was the absolute owner of the same. Finally it was alleged as follows:

"'That by virtue of the facts hereinbefore set out and otherwise, and more particularly by virtue of the control, direction,
409 dominion, and supervision exercised by the persons who are the officers of the defendant railroad and by the defendant over all the operations of the said coal company, embracing the mining and production of said coal, the shipment and transportation of the same over the defendant railroad, and the sale thereof at the seaboard, it follows:

"'First. That the coal company, not being in substance and in good faith a bona fide corporation, separate from the defendant, but a mere adjunct or instrumentality of the defendant, the defendant at the time of transportation, has an interest, direct or indirect, in a legal or equitable sense, in said coal.

"'Second. That said coal of said coal company is mined and produced under the authority of defendant, and the defendant at the time of transportation and before the act of transportation has not in good faith dissociated itself from all exercise of authority over said coal but continues to exercise authority over said coal at the time of transportation and over the subsequent sale thereof.'"

The Circuit Court refused permission to make this amendment—the refusal apparently resting upon the ground that the amendment added nothing essentially new to the original cause of action—and again entered a final decree against the Government. Thereupon another appeal was taken to the Supreme Court, and the court held (United States v. Lehigh Valley Co., 220 U. S., 257, et

seq.) that the amendments should have been allowed, declaring that the additions thereby proposed to the original bill were not foreclosed by the decision in the Delaware & Hudson Company's case. After summarizing the amendment in the words quoted above, the Chief Justice went on to say (p. 271):

"While that decision expressly held that stock ownership by a railroad company in a bona fide corporation, irrespective of the
410 extent of such ownership, did not preclude a railroad company from transporting the commodities manufactured, mined, produced, or owned by such corporation, nothing in that conclusion foreclosed the right of the Government to question the power of a railroad company to transport in interstate commerce a commodity manufactured, mined, owned, or produced by a corporation in which the railroad held stock and where the power of the railroad company as a stockholder was used to obliterate all distinctions between the two corporations. That is to say, where the power was exerted in such a manner as to so commingle the affairs of both as by necessary effect to make such affairs practically indistinguishable, and, therefore, to cause both corporations to be one for all purposes. To what extent the amendment charged this to be the case will become manifest by again particularly considering its averments concerning the use by the railroad company of the coal company as a purchaser of coal, as also the direct charge made in the proposed amendment that by such acts the railroad company was enabled to control all or a greater portion of the coal produced in the region tributary to its road, and thus to dominate the situation and fix the price, not only at which all the coal could be bought, but at which it could be sold at the seaboard for consumption.

"That the facts thus averred and the other allegations contained in the proposed amended bill tended to show an actual control by the railroad company over the property of the coal company and an actual interest in such property beyond the mere interest which the railroad company would have had as a holder of stock in the coal company is, we think, clear. The alleged facts, therefore, brought the railroad company, so far as its right to carry the product of the coal company is concerned, within the general prohibitions of the commodities clause, unless for some reason the right of the railroad company to carry such product was not within the operation
411 of that clause. The argument is that the railroad company was so excepted, because any control which it exerted or interest which it had in the product of the coal company resulted from its ownership of stock in that company, and would not have existed without such ownership. The error, however, lies in disregarding the fact that the allegations of the amended bill asserted the existence of a control by the railroad company over the coal corporation and its products, rendered possible, it is true, by the ownership of stock, but which was not the necessary result of a bona fide exercise of such ownership and which could only have arisen through

the use by the railroad of its stock ownership for the purpose of giving it, the railroad company, as a corporation for its own corporate purposes, complete power over the affairs of the coal company, just as if the coal company were a mere department of the railroad. Indeed, such a situation could not have existed had the fact that the two corporations were separate and distinct legal entities been regarded in the administration of the affairs of the coal company. Granting this to be the case, however, it is in effect urged, as the railroad company held all the stock in the coal company, and therefore any gain made or loss suffered by that company would be sustained by the railroad company, no harm resulted from commingling the affairs of the two corporations and disregarding the fact that they were separate juridical beings, because ultimately considered they were but one and the same. This, however, in substance but amounts to asserting that the direct prohibition of the commodities clause ought to have been applied to a case of stock ownership, particularly to a case where the ownership embraced all the stock of a producing company, and therefore that a mistake was committed by Congress in not including such stock ownership within the prohibitions of the commodities clause. We fail, however, to appreciate the relevancy of the contention. Our duty is to enforce the statute and not to exclude from its prohibitions things which are properly embraced within them. Coming to discharge
412 this duty it follows, in view of the express prohibitions of the commodities clause, it must be held that while the right of a railroad company as a stockholder to use its stock ownership for the purpose of a bona fide separate administration of the affairs of the corporation in which it has a stock interest may not be denied, the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation and effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

It will be observed that (for the purpose of deciding whether the Government's motion should have been allowed) the Supreme Court necessarily assumed that the averments of the proposed amendment were true, and, while a summary of these averments has already been given, it may therefore be useful to give the full text in the margin.*

*(In the margin:)

"The defendant (the Lehigh Valley Railroad Company) continuously for several years last past has been and now is the owner of the entire capital stock of the Lehigh Valley Coal Company, hereinafter called 'the Coal Company,' a corporation of the State of Pennsylvania, which holds by conveyances and leases anthra-
413 cite coal lands and coal mines situated in the counties of Carbon, Lehigh, Luzerne, and Wyoming, in the State of Pennsylvania, which mines have been and are being operated in the mining of coal, and are tributary to the lines of transportation operated by the defendant, and the coal so mined has been and is being carried by the defendant over its said lines of transportation. There have been and are a large number of other companies and individuals situated in the same localities and engaged in the mining of such anthracite coal and in shipping the same over the lines of transportation owned by the defendant to markets in other States in competition with each other and the Coal Company.

"The Coal Company is so organized and controlled by the defendants and its affairs are so conducted as to make it merely an instrumentality or adjunct of the defendant. That the Coal Company is a mere adjunct, instrumentality, or department of the defendant appears from the following facts, among others:

"For a long time past the defendant has owned and now owns the entire capital stock of the Coal Company.

"For a long time past the officers of the defendant have been and are now the principal officers of the Coal Company. They are appointed officers of the Coal Company through the influence of the defendant, and for the reason that they are, respectively, officers of the defendant; as officers of the Coal Company they are acting merely on behalf of and for the defendant and under the direction and instructions of the latter.

"Specifying the officers more particularly:

"The president of the defendant, E. B. Thomas, is president of the Coal Company; the first vice president of the defendant, J. A. Middleton, is second vice president of the Coal Company; the assistant to the president of the defendant, L. D. Smith, is assistant to the president of the Coal Company; the secretary of the defendant, D. J. Baird, is secretary of the Coal Company; the treasurer
414 of the defendant, W. C. Alderson, is treasurer of the Coal Company; the assistant treasurer of the defendant, J. M. Baxter, is assistant treasurer of the Coal Company; the assistant secretary of the defendant, E. A. Albright, is assistant secretary of the Coal Company; the assistant treasurer of the defendant, J. William Robbins, is assistant secretary of the Coal Company.

"Of the six directors of the Coal Company, the following, to wit, George F. Baker and E. T. Stotesbury, are directors of the defendant, and J. A. Middleton and L. D. Smith are, respectively, first vice president and assistant to the president of defendant.

"E. B. Thomas, E. T. Stotesbury, and George F. Baker, who are on the executive committee of the Coal Company, are also on the executive committee of the defendant.

"The defendant, by reason of the fact that it owns the entire capital stock of the Coal Company, is enabled to and does dictate who shall be elected directors of the Coal Company, who shall be its officers and employees, and who shall be on the various committees.

"Each of the above-named officers, directors, and committeemen, and others not specified, is appointed to his position in the Coal Company by reason of his holding a position with the defendant, thereby enabling him in all matters to act in the interests and on behalf of the defendant, and in the position in the Coal Company to which he has been appointed he acts in reality for and on behalf of the defendant and under the directions of the latter.

"The Coal Company uses the offices of the defendant, and the work of the Coal Company is carried on over the desks belonging to the defendant. The Coal Company, in fact, is nothing more than a department of the defendant, being operated by officers who, in their principal capacity, are officers of the defendant, and by virtue of their position in the defendant, control and dominate the actions of the Coal Company.

415 "The defendant, through its officers and directors, exercises a supervision over the coal mined by the Coal Company from the time of the mining of said coal to the sale of the same at New York and other markets. The defendant, through its officers and directors, determines how much coal the Coal Company shall mine, it dictates the shipment and transportation of said coal over its own lines, and it fixes, regulates, and determines the price at which the Coal Company shall sell the coal at the Atlantic seaboard and other places to which it has been transported over the lines of the defendant or at the dictation of the defendant.

"Acting under the direction and instructions of the defendant, and of its officers and directors, the Coal Company has entered and is entering into contracts with other companies and individuals, producers, and miners of coal, and tributary to the lines of transportation owned by defendant and to other railroads, for the purchase of the coal mined by said companies and individuals. The defendant causes this coal to be shipped and transported over its own lines, and, acting through the Coal Company, it fixes and determines the prices at which such coal shall be sold after transportation to the Atlantic seaboard and other markets. The Coal Company as a rule loses money on these transactions, as the amount received by it for the coal which it has bought from such companies and individuals generally do not equal the price paid by it for the coal plus the cost of transportation to market. The purpose of the defendant in compelling the Coal Company to enter into such contracts with other coal companies and individuals is thereby to remove the competition which would otherwise exist between the coal mined and sold by such companies and the coal controlled by the defendant through the Coal

Company, and, furthermore, to enable the defendant, by means of these contracts, to dictate the transportation of such coal over its own lines and to obtain the freight charged therefor.

416 "The Coal Company has not paid any dividends upon its stock during the time such stock has been owned by the defendant. It has been furnished millions of dollars by the defendant, which it has never refunded, and upon which during many years it paid no interest. The defendant has guaranteed bonds of the Coal Company, and paid interest on such bonds. The earnings of the defendant received for the transportation over its lines of the coal produced by the Coal Company and of the coal controlled, by means of the contracts above described, compensates the defendant for the failure of the Coal Company to pay dividends on its stock.

"The operation of the Coal Company by the defendant in effect merely is a device for evading the law, and more particularly the provisions of the said commodities clause. The Coal Company is not a bona fide mining company, but is merely an adjunct or instrumentality of the defendant. The defendant is in legal effect the owner of and has a pecuniary interest in the coal mined by the Coal Company, and which is transported by the defendant.

"That by virtue of the facts hereinbefore set out and otherwise, and more particularly by virtue of the control, direction, domination, and supervision exercised by the persons who are the officers of the defendant railroad and by the defendant over all the operations of said Coal Company, embracing the mining and production of said coal, the shipment and transportation of the same over the defendant railroad, and the sale thereof at the seaboard, it follows:

"First. That the Coal Company, not being in substance and in good faith a bona fide corporation, separate from the defendant, but a mere adjunct or instrumentality of the defendant, the defendant, at the time of transportation, has an interest, direct or indirect, in a legal or equitable sense, in said coal.

"Second. That said coal of said Coal Company is mined and
417 produced under the authority of defendant, and the defendant at the time of transportation and before the act of transportation has not in good faith dissociated itself from all exercise of authority over said coal, but continues to exercise authority over said coal at the time of transportation and over the subsequent sale thereof.

"Therefore the transportation of said coal by the defendant in the manner and under the circumstances hereinabove described constitutes a violation of the fifth paragraph of the first section of said 'act to regulate commerce,' as amended by an act of Congress approved June 29, 1906."

We repeat that the language just quoted from the opinion in the Lehigh Valley case was used upon the assumption that the averments of the proposed amendment were true, and it is these, therefore, that were held to describe a relation, and particularly to describe a course of conduct or a series of acts that "obliterated all

distinction between the two corporations," and that so commingled their affairs "as by necessary effect to make these affairs practically indistinguishable, and thus cause both corporations to be one for all purposes." It was held that, although a railroad company may carry in interstate commerce the product of a manufacturing, mining, producing, or owning corporation in which the railroad has a stock interest, the power given by such interest must not be abused; for the duty that rests upon the railroad not to abuse such power, "so as virtually to do by indirection that which the commodities clause prohibits, * * * plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own so as to cause them to be one and inseparable."

The opinion in the Lehigh Valley case was delivered in April, 1911, and the reports of the Attorney General for 1911 and
418 1912 contain references to the subject. In the report for 1911 the two decisions of the Supreme Court are thus referred to:

"As stated in my last annual report, after the decision in the original commodities clause case (U. S. v. Delaware & Hudson Company, 213 U. S., 366)—in which the Supreme Court, while sustaining the validity of that provision in the Hepburn Act of 1906 (34 Stat., 584) which prohibits the transportation in interstate commerce by a carrier of a commodity produced or owned by it, etc., except such as may be necessary in the conduct of its business, held, however, that a carrier was not the owner of an interest in articles manufactured, mined, produced, or owned by a corporation whose stock was owned by it, within the meaning of the statute—the Government applied to the circuit court for leave to file an amended bill, which was denied, whereupon an appeal was taken to the Supreme Court from that decision. In substance, the Government, by its proposed amendment, averred that, in the particular case at bar, the railroad company was not only the owner of all the stock issued by a coal company, but that it so used the power resulting from this stock ownership as to deprive the coal company of all real independent existence, and to make it virtually but an agency, or dependency, or department, of the railroad company. In other words, to employ the language of the court:

"'In great detail facts were averred which tended to establish that there was no distinction in practice between the coal company and the railroad company, the latter using the coal company as a mere device to enable the railroad company to violate the provisions of the commodities clause.'

"The Supreme Court, on this showing, reversed the order of the Circuit Court and remanded the case with instructions to permit the amendment to be filed, because the facts, if proven, would bring
the railroad company, so far as its right to carry the product
419 of the coal company was concerned, within the general prohibitions of the commodities clause. Accordingly the Government is proceeding in the Circuit Court, endeavoring to apply

the prohibitions of the commodities clause to the carriage by a railroad company over its line of coal mined and owned by a coal company, every share of the stock of which is owned by the railroad company, and which is operated as a department of the railroad company."

And in the report for 1912 the following statement will be found on pages 23 and 24:

"Following the decision in the case of United States v. Lehigh Valley Railroad Company, referred to in my last annual report (220 U. S., 257), remanding the case to the Circuit Court with instructions to allow the Government to amend its complaint in order to show that the Lehigh Valley Coal Company was in fact a mere adjunct, instrumentality, or department of the railroad company, and, therefore, that ownership of the coal by the coal company at the time of transportation amounted in reality to ownership by the railroad company, and was transported in violation of the commodities clause of the commerce act (34 Stat., 584), the railroad company filed an answer to the amended complaint putting its allegation in issue. Subsequently, however, the railroad company caused to be incorporated under the laws of New Jersey a separate company known as the Lehigh Valley Coal Sales Company, with an authorized capital stock of $10,000,000, of which $6,060,800 was issued forthwith. The Lehigh Valley Railroad Company declared a dividend in January, 1912, of ten per cent on its outstanding capital stock; this dividend amounted in the aggregate to $6,060,800. The preferred and common stockholders of the railroad company were given the privilege of subscribing to shares of the sales company to an amount equivalent to ten per cent of their holdings. By this method, in effect, the shares of the sales company were distributed to and among the
420 shareholders of the railroad company. Thereupon, on March 1, 1912, the Lehigh Valley Coal Company entered into a contract with the Lehigh Valley Coal Sales Company whereby the former agreed to sell to the latter all coal hereafter mined by it from all coal lands owned or leased by it, together with all coal it may purchase, the sales company agreeing to purchase and take all such coal at a price delivered f. o. b. railroad cars at the breakers where the same is prepared, at, for all sizes above pea coal, a sum equal to sixty-five per cent of the general average f. o. b. price of said sizes received at the water points at or near New York, between Perth Amboy and Edgewater.

"The situation is, therefore, that coal which is shipped over the Lehigh Valley Railroad is mined by the Lehigh Valley Coal Company, all of whose stock is owned by the railroad company, and is sold at the breakers to the Lehigh Valley Coal Sales Company, all of whose stock has been originally issued to and distributed among the stockholders of the railroad company pro rata, but which company has separate officers from the railroad company, and separate directors, and whose stock may be sold by the stockholders without regard to their continued holding of stock in the railroad company.

By this arrangement both the railroad company and the coal companies seem to have parted in good faith with title to the coal before transportation begins, and it is claimed, therefore, that transportation is free from the prohibition of the commodities clause as construed by the Supreme Court in 213 U. S., 412. The question will be submitted to the court at an early day."

In the following month, on January 27, 1913, the amended bill in the Eastern District of Pennsylvania was dismissed with the Government's consent, but without prejudice to the right to bring a new suit. We understand that such a suit has recently been brought in the Second Circuit.

421 The foregoing résumé states in sufficient detail the course of the previous litigation against the coal-carrying roads and brings us to the present dispute. The rules to which we have referred are now to be applied to the relation existing and to the course of conduct actually pursued between the Delaware, Lackawanna & Western Railroad Company and the Delaware, Lackawanna & Western Coal Company, and we are to determine whether the facts establish that the power of the Railroad Company has been "used to obliterate all distinctions between the two corporations;" or (to employ other language of the court) whether the power of the Railroad Company has been "exerted in such a manner as to commingle the affairs of both as by necessary effect to make such affairs practically indistinguishable, and therefore to cause both corporations to be one for all purposes." If the railroad has the power to attain the objects thus condemned, and if these objects have been attained by the actual use and exertion of the power, the commodities clause has been violated; otherwise, it has not been infringed.

It will be a help in appreciating the evidence now under consideration if we first take some account of the general situation in the anthracite region of Pennsylvania. This is well described in a paragraph from page 224 of 164 Fed.—afterwards quoted by the Supreme Court in the Delaware & Hudson case, at page 402 of 213 U. S.:

"The general situation is, that for a half century or more it has been the policy of the State of Pennsylvania, as evidenced by her legislative acts, to promote the development of her natural resources, especially as regards coal, by encouraging railroad companies and canal companies to invest their funds in coal lands, so that the product of her mines might be conveniently and profitably con-

422 veyed to markets in Pennsylvania and in other States. Two of the defendant corporations, as appears from their answers, were created by the Legislature of Pennsylvania, one of them three-quarters of a century ago and the other half a century ago, for the express purpose that its coal lands might be developed and that coal might be transported to the people of Pennsylvania and other States. It is not questioned that, pursuant to this general policy, investments were made by all the defendant companies in coal lands and mines, and in the stock of coal-producing companies, and that coal production was enormously increased and its economies promoted by

the facilities of transportation thus brought about. As appears from the answers filed, the entire distribution of anthracite coal in and into the different States of the Union and Canada for the year of 1905 (the last year for which there is authoritative statistics) was 61,410,201 tons; that approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the defendant railroads, from Pennsylvania to markets in other States and Canada; and of this four-fifths, from 70 per cent to 75 per cent was produced either directly by the defendant companies or through the agency of their subsidiary coal companies. It also appears from the answers filed that enormous sums of money have been expended by these defendants to enable them to mine and prepare their coal and to transport it to any point where there may be a market for it. It is not denied that the situation thus generally described is not a new one created since the passage of the act in question, but has existed for a long period of years prior thereto, and that the rights and property interests acquired by the said defendants in the premises have been acquired in conformity to the Constitution and laws of the State of Pennsylvania, and that their right to the enjoyment of the same has never been doubted or questioned by the courts or people of that Commonwealth, but has been fully recognized and protected by both."

423 In addition to these considerations, the following facts—also taken from the Delaware & Hudson case in 164 Fed., on page 221—were especially applicable then to the Railroad Company now defendant, and may be referred to again as relevant to a large extent in the present controversy:

"The Delaware, Lackawanna & Western Railroad Company, like the Delaware & Hudson Company, admits that it is the owner of coal lands, and mines coal which it sells; that it was organized under an act of the Legislature of Pennsylvania in 1849 (act Feb. 19, 1849 [P. L. 79]); that all the lines of railroad owned by it are wholly within the State of Pennsylvania, extending from the Delaware River, at the boundary line of the State of New Jersey, in a northwesterly direction across the State of Pennsylvania, to the boundary line between the State of Pennsylvania and the State of New York, with a branch line extending from Scranton, in the State of Pennsylvania, to Northumberland in said State. Said defendant also admits and alleges that under express authority of acts of the legislatures of the State of Pennsylvania, New Jersey, and New York it, as lessee, now operates, and long prior to May 1, 1908, had operated various lines of railroad in the two last-mentioned States, by which it has direct traffic connection with the city of Buffalo and other cities in the said States. Defendant also admits that for many years it has owner in fee extensive tracts of coal land in the State of Pennsylvania; that it has also leased large tracts of coal lands in the said State, and is now engaged, and for many years last past has been engaged, in mining coal from the lands so owned and leased by it; that the holding of said lands, whether in fee or by lease, and the

mining, manufacture, and interstate transportation of the coal therefrom has been and continues to be under and by virtue of the authority of the laws of the State of Pennsylvania; that in addition to the foregoing, certain coal companies, organized from time
424 to time under acts of assembly of the said State of Pennsylvania, have been merged into said defendant corporation; that by an act of the General Assembly of the State of Pennsylvania, approved April 15, 1869, entitled 'An act to authorize railroad and canal companies to aid in the development of the coal, iron, lumber, and other material interests of this Commonwealth,' the defendant was authorized to aid corporations authorized by law to develop coal, iron, lumber, and other material interests of Pennsylvania, by purchase of their capital stock or bonds, or either of them. The answer of said defendant also alleges that, by reason of its ownership of said coal lands and coal and the revenues derived from the transportation of the same to market it has been enabled to expend millions in the betterment of its general transportation facilities for both goods and passengers, and give to the public the benefits of a well-constructed and equipped modern railroad. That by virtue of leases of railroads to enable it to transport coal in interstate commerce it has become bound to pay yearly, in interest charges, the sum of $5,155,697 and for taxes $1,163,916. That out of a total of about 8,700,000 tons of coal produced by it in the year 1907 from its land owned in fee and leased upwards of 6,700,000 tons were transported over its lines of railroad in interstate commerce; that from 40 per cent to 60 per cent of its annual transportation earnings, from the operation of leased lines, has been derived from the carriage of its own coal thereover. That it uses, in the conduct of its business as a common carrier approximately 1,700,000 tons of anthracite coal of pea size or smaller annually, and will require more for such use in the future; that to obtain this coal in these economic sizes it is necessary to break up coal, leaving the larger sizes which must be disposed of otherwise; that great waste would result if it were forbidden to transport to market in interstate commerce these large sizes thus resulting. That defendant's rights to acquire its holding of
425 coal land, its rights to own and mine coal and to transport the same to market in other States as well as in Pennsylvania, and its leases of other railroads, were acquired many years prior to the enactment of the so-called 'interstate commerce act,' and of the said amendment thereto known as the 'commodities clause.'"

Turning to the record now under consideration, we find no facts of importance in dispute: the controversy is over the inferences that should properly be drawn therefrom. The relation existing between the two defendants is a direct result of the railroad's effort to obey the decision of the Supreme Court in the first of the cases referred to—United States v. Delaware & Hudson Co. When that decision was announced on May 3, 1909, the Railroad Company was presented with a serious problem. It owned or leased 15,000 acres of coal lands

in the Wyoming region, and these were of great value, both present and prospective. Its mines were producing several million tons of coal each year, and the sale and carriage of this coal were highly important sources of revenue, and its uninterrupted distribution through the established channels of trade was of great importance to the public. It had more than 600,000 tons of mined coal on hand, not yet disposed of, either on storage or in course of transit. A demand for the coal that the railroad had been selling for many years existed throughout a wide territory, stretching from New England into Canada and the middle west; and an extended and elaborate organization had grown up in the course of a long and continuous effort to bring the coal to the consumer seasonably and economically. Facilities for storage and handling had gradually been acquired and expanded; numerous contracts had been made with agents and dealers; other contracts existed with independent operators for the purchase of additional coal for carriage and sale—all this, and
426 much more, resting upon the undisturbed practice of many years under direct State authority, whereby the Railroad Company mined its own coal, bought coal from others, and carried and sold in many and in widely separated markets the property thus mined and bought.

This long-established business was now to be changed, and changed almost immediately. In our opinion the evidence shows that the railroad intended to obey the law as the Supreme Court had authoritatively announced it, and we may say at once that an examination of the record affords no ground to doubt the good faith of all concerned in the transactions now complained of. No trick or sham or evasion was contemplated or attempted, but a genuine effort was apparently made to comply with the statute and to carry out openly and publicly what the court had declared to be necessary. The situation was not welcome, but the railroad clearly understood it and accepted it frankly. No doubt existed that the railroad must dissociate itself in good faith from the ownership of the coal before the act of transportation should begin, and must divest itself of every interest therein, either direct or indirect. Counsel were therefore consulted and a plan was adopted. As a business proposition it was evidently indispensable to find a single purchaser who should be able, financially and in other respects, to handle several million tons a year; it was obviously impracticable to dispose of such a quantity by sales in small lots to small dealers, or for small dealers to distribute afterwards to numerous consumers scattered over so wide an area. So large a quantity, needed in so many places at about the same time, could only be handled by someone with large capital and with a well-organized and capable force of agents. It was therefore decided that a New Jersey corporation should be organized with a capital sufficiently large, and that this corporation should take over the
427 trained and experienced clerks and agents connected with the coal-sales department of the railroad's business.

It was recognized as desirable that the relations between the railroad, as the seller, and the proposed Coal Company, as the buyer, should be friendly, and in the first instance the stock in the Coal Company was offered only to the shareholders of the Railroad Company. They were expected to accept the offer, and this expectation was realized. As is well known, the defendant railroad has had a prosperous career, and in June, 1909, it had a large cash surplus. Out of this fund it declared a dividend of 50 per cent, and offered to its shareholders the right to use one-half the dividend to buy the shares of the proposed coal-sales company at par. The offer was accepted by nearly all the shareholders; the only exceptions were thirty-six separate interests, representing 2249 shares. Since that time, however, many changes have taken place among the stockholders of either company. Both stocks are dealt in by the public, one on the exchange and the other on the curb, the result being that in October, 1913, the shares of the railroad not interested in the Coal Company had increased from 2249 to 88,716, and the shares in the Coal Company not interested in the railroad had increased to 6907. The number of shareholders in the Coal Company had become 1588, and of these 801 were women, either in their own right or as cestuis que trustent.

The capital subscribed and paid in before August 2, 1909, was nearly $6,600,000, but the Railroad Company did not subscribe or pay for a single share, and had no interest therein, direct or indirect. The capital was all subscribed and paid for by individuals; but, as these individuals were also stockholders of the Railroad Company, the Government contends (almost solely for this reason) that the two corporations are in effect identical and cannot be re-
428 garded as distinct. If this ground be not well taken, scarcely anything is left of the Government's case—certainly nothing that would support a decree. But, if the contention be sound, the case is made out, and accordingly this point is much insisted upon in the brief, where numerous cases are cited and discussed. We do not think it necessary to take them up in detail. Some of them differ essentially from the case at bar in the fact that they disclose fraud or bad faith as an element, whereas here nothing of the kind exists. But we need not discuss these or any other authorities, because the Supreme Court has already declared distinctly the rule for these particular cases, and has determined that a railroad itself might lawfully hold stock in a manufacturing, mining, producing, or owning corporation, upon the single condition that the latter be a bona fide organization. In the Delaware & Hudson case—on page 415 of 213 U. S.—the court said, that while the carrier was forbidden to have any interest, direct or indirect in a legal or equitable sense, in the article or commodity carried, nevertheless this prohibition of the statute did "not include . . . articles or commodities manufactured, mined, produced, or owned, &c., by a bona fide corporation in which the Railroad Company is a stockholder." This would seem to be plain enough without more, but as the subject was im-

portant the court returned to it in the Lehigh Valley case and left no room for doubt. On page 266 of 220 U. S., the Chief Justice declared that "the prohibitions of the statute were addressed only to a legal or equitable interest in the commodities to which the prohibitions referred. That they therefore did not prohibit a railroad company from transporting commodities mined, manufactured, produced, or owned by a distinct corporation, merely because the Railroad Company was the owner of some or all of the stock in such corporation." And on page 271, the Delaware & Hudson
429 case is again referred to as holding expressly that "stock ownership by a railroad company in a bona fide corporation, irrespective of the extent of such ownership, did not preclude a railroad company from transporting the commodities manufactured, mined, produced, or owned by such corporation."

We may therefore assert with confidence that since a railroad itself may own stock in the producing or owning corporation without offending against the statute, no offense is committed although individual subscribers to such stock may also be stockholders in the railroad. No act of Congress or judicial decision has declared it to be illegal for an individual citizen to invest his money in two enterprises, merely because the enterprises may be closely connected. But what the Supreme Court did lay down was this: Although a railroad company may lawfully own stock in a producing or owning corporation, it must not use the power given by such ownership to obliterate the distinction between the two organizations; it must not exert such power so as to commingle indistinguishably the affairs of both, and thus cause both corporations to be one for all purposes; it must not destroy the entity of the producing or owning corporation, and thus make the two virtually one—if it actually do these forbidden things, then the commodities clause applies and condemns as unlawful such an abuse of a lawful right. But it is the abuse that is unlawful, not the mere existence of the relation or of the right growing out of the lawful ownership of stock.

Let us see therefore what has been actually done by the two defendants. The railroad owns no stock, and has no legal or equitable interest, in the Coal Company. As far as the evidence discloses, it has taken little, if any, corporate action except to authorize the contract hereafter quoted. But we may fairly infer, although
430 there is not much positive evidence on the subject, that the plan varried out was initiated and finally agreed upon by some at least—probably by all, or by a majority—of a comparatively small group of thirty-five persons who own a controlling interest in the railroad's stock. They (or nearly all of them, twenty-eight or twenty-nine being the number) also own a majority of the Coal Company's stock, and we take it for granted that they actually control both companies. Being majority stockholders, they have a lawful right to exercise the power of control, provided they exercise it for lawful objects. We assume also that several other facts upon which the Government lays especial stress are due to the will of this

controlling group, namely; the facts, that the vice president of the Railroad Company, who was the former head of its coal department, became the president of the Coal Company; that a former sales agent of the Railroad Company transferred his services to the Coal Company and has been (and is now) its vice president and general sales agent; that the president of the Railroad Company is a member of the Coal Company's board of directors, and that three other members are sons of directors on the board of the railroad. As far as these facts go, they are pertinent to the Government's contention, and are legitimately used in the effort to prove that the two corporations are identical. But of themselves they are not sufficient; no effort has been made to show, and we do not understand the Government to suggest that the sons (who own no stock in the Railroad Company) have been unfaithful to their trust and have betrayed the interests of the Coal Company which they help to direct; there was no serious effort to show that any of the present or former officials of the Railroad Company that are now, or have been, in the Coal Company's service, have used their power or influence improperly.

And—what is more to the point in the present inquiry—nothing was offered in denial of what the evidence shows to be a 431 fact, namely, that the Coal Company has never been favored over other shippers of coal by discrimination in rates or in practices, or in facilities or quality of service. As the Supreme Court has recently pointed out in Railroad Company v. United States, 231 U. S., 363, where the object of the commodities clause was considered, the evil at which the clause was aimed was the danger that a carrier, if he were also the owner of the goods transported, would favor himself unduly:

"If such carrier hauls for the public and also for its own private purposes, there is an opportunity to discriminate in favor of itself against other shippers in the rate charged, the facility furnished, or the quality of the service rendered. The commodity clause was not an unreasonable and arbitrary prohibition against a railroad company transporting its own useful property, but a constitutional exercise of a governmental power intended to cure or prevent the evils that might result if, in hauling goods in or out, the company occupied the dual and inconsistent position of public carrier and private shipper."

The following facts are also pertinent upon the question, how far the corporate activities and the actual operations of the two companies have been distinct and separate. In August, 1909, they entered into the contract of which the Government complains. A summary of that agreement is given in the bill of complaint:

"That the Railroad Company would sell to the Coal Company all mined, marketable coal then owned, except such as it should elect to retain for use in its business as a common carrier, to be paid for within thirty days at prices designated.

"That the Railroad Company would lease to the Coal Company certain described storage and stocking plants, trestles and docks,

and accepted in payment 5 per cent per annum on a valuation to be agreed upon.

432 "That the Coal Company would take over certain leases of trestles and sales agencies contracts theretofore made by the Railroad Company.

"That the Railroad Company would sell and deliver to the Coal Company, f. o. b. cars at the breakers, all coal thereafter mined by the former from all lands owned or leased by it, together with all coal purchased by it, the amount to be so sold and delivered to be at the absolute option of the seller and without liability upon its part for failure to supply any. The Coal Company agrees to purchase all coal offered by the Railroad Company, and no other, unless necessary to comply with contracts then outstanding.

"That the railroad might retain sufficient coal for its use as a common carrier.

"That the Coal Company would accept from the Railroad Company all coal delivered on cars at the breakers, and pay for all sizes above pea 65 per cent of the general average f. o. b. prices at tide points at or near New York between Perth Amboy and Edgewater, and for the smaller sizes specified portions of such general average prices.

"That the Coal Company would conduct the business of selling so as to best conserve the interest of and preserve the good will and markets of the coal mined by the Railroad Company; that any disputes which might arise between the parties should be settled through a board of arbitration, made up as specified; and that the terms of the agreement itself might also be modified by arbitration if conditions justified.

"That the contract should continue to be operative until six months after either party shall notify the other in writing of its intention to cancel the same, and that upon its expiration the Coal Company would sell to the Railroad Company and the latter would buy all coal then stored or in transit theretofore purchased by the former at prices to be agreed upon or fixed by arbitration."

(The full text of the contract will be found in the margin.*)

433 *"This contract entered into this second day of August, 1909, between the Delaware, Lackawanna & Western Railroad Company, hereinafter called the 'seller,' of the first part, and the Delaware, Lackawanna & Western Coal Company, hereinafter called the 'buyer,' of the second part, witnesseth:

"Whereas the seller is the owner of coal lands situated at various points in the counties of Luzerne and Lackawanna, and the State of Pennsylvania, and has been engaged both in mining the coal therefrom and in transporting to market and selling the same, and in like manner has so transported and sold large amounts of coal purchased by it in said State; and whereas the seller, to so sell its coal, has constructed storage plants and trestles at various points in different States and has entered into various sales agency contracts; and whereas to so market said coal most of the same must be trans-

ported in interstate commerce, so that it has become necessary for the seller, in compliance with law, to sell all of its coal within the State of Pennsylvania; and whereas the buyer is desirous of contracting to so purchase all of the seller's coal at its mines, to contract for the transportation of the same to market, and to sell the same, and for such purpose to lease of the seller various of its storage plants, trestles, offices, and other facilities, and assume its selling agency contracts;

"Now, therefore, in consideration of the premises, and of the mutual covenants herein contained, it is agreed as follows:

"First. The seller agrees to sell to the buyer, and the buyer agrees to buy of the seller, all mined, marketable coal wherever situated now owned by the seller, and either stored, held at various points, or in the course of transportation, except such coal as the seller elects to retain for its use in the conduct of its business as a common carrier. The buyer shall pay the seller therefor, in cash within thirty days from the date hereof, as follows, viz: For all of
434 the coal in transit, at prices to include the full tariff charges of the seller and of all other carriers whose charges have been paid by the seller for the transportation of such coal from the mines, together with the market value thereof at the mines as fixed herein, at prices prevailing for the month of July, 1909, for all coal stored, of all sizes, at points west and north of Buffalo, New York, the sum of five dollars and fifty cents ($5.50) per gross ton; for prepared sizes of coal stored at Buffalo and at other points along the lines of the owned, leased, and controlled lines of the seller, the sum of four dollars ($4.00) per gross ton; for sizes smaller than prepared sizes so stored at Buffalo and points east, along the lines of the seller, not including that stored at or about the mines of the seller, the sum of one dollar ($1.00) per gross ton. The buyer shall also pay an equitable proportion of taxes for the year 1909 assessed or to be assessed against such stored coal.

"The buyer hereby assumes and agrees to pay all unpaid charges of every nature incurred in connection with the transportation or storage of said coal, and hereby assumes all risks and obligations in connection therewith from the beginning of the day of the date hereof.

"Second. The seller shall lease to the buyer contemporaneously herewith the following properties: The Checktowago stocking plant, at Buffalo, New York; the Port Morris storage plant, at Port Morris, New Jersey; the Dover stocking plant, at Dover, New Jersey; the Erie Street lake trestle, at Buffalo, New York; the transfer trestle, at East Buffalo, New York; the lake shipping trestle, at Oswego, New York; the canal trestle, Clinton Street trestle, and Geddes yard trestle, at Syracuse, New York; the canal trestle, at Utica, New York; the retail trestles located, respectively, at Newark, Harrison, Bloomfield, Summit, and Paterson, New Jersey; the Division Street dock trestle, at Chicago, Illinois; the Wabash dock trestle, at Toledo, Ohio. The rental to be paid the seller by the buyer for the use

of said properties shall be five per cent (5%) of their agreed value, including good will, and the leases shall provide that the
435 buyer shall keep the said properties insured and in repair, and shall contain such other covenants as may be proper to protect the interests of the seller.

"The seller has leased certain of its trestles to different persons, as follows: The Main Street, Erie Street, Chicago Street, Seneca Street, Walden Avenue, and Black Rock trestle, at Buffalo, New York, to E. L. Hedstrom; the McKinney trestle at Binghamton, New York, the Chemung Coal Company trestle, at Elmira, New York, the Oswego Coal Company trestle, at Oswego, New York, the Gilmore trestle, at Utica, New York, the Horre trestle and elevator on pier five, Hoboken, New Jersey; Burns Brothers' trestle on property of the seller at South Brooklyn, New York, the Klink trestle at Syracuse, New York, a coal trestle at Bath, New York, and various other trestles located on the lines of its owned, leased, and controlled lines.

"The seller has also entered into sales agency contracts, as follows: With E. L. Hedstrom & Company, Chicago, Illinois; S. C. Schenck, Toledo, Ohio; Northwestern Fuel Company, St. Paul, Minnesota; Milwaukee Western Fuel Company, Milwaukee, Wisconsin; E. L. Hedstrom, Buffalo, New York, and Ogdensburg Coal and Towing Company, at Ogdensburg, New York.

"All of such leases and sales agency contracts shall be taken over by the buyer as of the date hereof, on terms to be agreed upon, and it shall assume all obligations of the seller with respect thereto, and be entitled to the benefits thereof. The buyer also agrees to lease of the seller the coal sales office building at Buffalo and Syracuse, New York, rooms in the station of the seller at Scranton, Pennsylvania, and suitable quarters at 90 West Street, New York City.

"The seller will provide that any of the foregoing properties so to be leased to the buyer which are owned by the Syracuse, Binghamton & New York Railroad Company, shall be so leased to it by such corporation.

436 "The seller has also entered into contracts for the sale of coal for the current year with various customers. A schedule of such contracts shall be prepared and furnished to the buyer by the seller. All of such sales contracts shall be assumed by the buyer as of the date hereof, and it agrees to comply with the terms and conditions of such contracts. The buyer also agrees to assume the obligations of a certain contract entered into October 8, 1905, between Lucy A. Turner and the seller in connection with the business of Henry B. Turner Coal Company at foot of East Twenty-third Street, New York, and shall be entitled to the benefits thereof without other consideration than that named herein.

"The seller has entered into a contract, dated June 17, 1905, expiring August 1, 1910, with the Solvay Process Company, of Syracuse, New York, providing for the sale of washery coal at prices named therein. It is understood that the buyer shall assume

such contract and supply said company with coal at prices named therein. The seller, however, agrees that as the buyer cannot conform to the conditions of such contract without a material loss it will adjust such loss with the buyer upon an equitable basis on terms to be agreed upon.

"Third. Subject to the conditions of this paragraph, and at the prices herein stated, the seller agrees, during the terms of this contract, to sell to the buyer all coal hereinafter mined by it from all coal lands owned or leased by it, together with all coal it may purchase. The buyer agrees to purchase all such coal at such prices and to pay the seller therefor in cash on the twentieth of each month for all coal delivered to it by the seller f. o. b. cars at the mines during the preceding month. The buyer also agrees on the fifteenth of each month to pay the seller in cash all traffic charges of its owned, leased, and controlled lines, and all monies advanced by it to other carriers for the transportation of said coal during the preceding month.

437 "The amount of coal to be so delivered and sold to the buyer by the seller shall be at the absolute option of the seller as its interests may determine, and the seller shall be subject to no liability whatsoever for failure to supply the buyer with such amount of coal as it may desire. The buyer agrees that, except to enable it to comply with the terms of the existing hereinbefore cited sales agency and other sales contracts of the seller, in the event of the failure of the seller to sell it coal, it will purchase all coal to be sold by it from the seller, and will purchase no coal from any other person or corporation except with the written consent of the seller.

"The seller reserves the right to retain all coal required by it for the use of its owned, leased, and controlled lines in the conduct of their business as common carriers. Also such coal as it may desire to sell its employees at the breakers, the same not to be hauled in railroad cars.

"The buyer agrees to pay the seller, and the seller agrees to accept from the buyer, the following prices for said coal, to be delivered f. o. b. railroad cars at the various breakers now located and hereinafter constructed by the seller at its mines aforesaid.

"For all sizes above pea coal, sixty-five (65) per cent of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater.

"For pea coal, fifty (50) per cent of the general average f. o. b. price for pea coal at said tide points at or near New York, when the said price is two dollars and fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above two dollars and fifty cents ($2.50) the proportion paid the seller shall be increased one (1) per cent until the percentage paid for pea coal reaches sixty-five (65) per cent.

"For buckwheat coal No. 1, forty (40) per cent of the general average f. o. b. price at said tide points at or near New York
438 when the said price is two dollars ($2.00) per ton or less, and

for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the seller shall be increased two (2) per cent until the said f. o. b. price reaches two dollars and fifty cents ($2.50), after which the proportionate price paid the seller shall advance one (1) per cent for each ten (10) cents advance in the f. o. b. price above two dollars and fifty cents ($2.50), as in the case of pea coal above mentioned. Provided, that nothing herein contained shall oblige the buyer to pay for buckwheat No. 1 coal a rate higher than for pea coal.

"For all sizes smaller than buckwheat No. 1 the seller shall receive twenty-five (25) cents per ton f. o. b. railroad cars at breakers, and for each ton ten (10) cents increase in the general average f. o. b. price above one dollar and thirty cents ($1.30) a ton at tide the price shall be increased five cents per ton.

"The general average f. o. b. prices herein referred to shall be determined by the general average free on board prices received for the various sizes on general market sales thereof at tide points at or near New York between Perth Amboy and Edgewater during each calendar month, and a statement of such prices shall be furnished the buyer by the seller prior to the eighth day of each month subsequent to that in which such monthly sales shall have been made, the intent of this provision being to ascertain and to fix the market price of the coal at the mines as nearly as may be as of the several and respective days of delivery of the coal at the mines.

"Payment on the twentieth day of each month for coal purchased during the preceding month shall be made at such prices.

"Fourth. The seller agrees that all its coal sold to the buyer shall be properly prepared for market in accordance with the past practice and standards of the seller.

"Fifth. The buyer agrees that at any transfer trestles
439 leased to it by the seller it will transfer from car to car any coal which the seller desires to have transferred, at a price to be agreed upon. It is also understood that the parties hereto shall adjust the charges to be paid by the buyer to the seller for coal forwarded to and unloaded from storage or stocking plants and with respect to other transportation charges to be subsequently covered by tariffs to be filed by the seller.

"Sixth. The buyer agrees that it will conduct the business of selling the coal of the seller in such manner as best to conserve the interests of and preserve the good will and markets of the coal mined by the seller, and to continue to fill the orders of all responsible present customers of the seller even though as to some of such customers the sales may be unprofitable, it being understood and agreed that at the prices above quoted the entire business of the buyer will be conducted at a profit.

"Seventh. In the event of dispute as to tidewater prices or as to the proper interpretation of any provision of this agreement, or if by reason of changes in market conditions, tariff rates or otherwise, modifications or changes in this contract should fairly be made,

and the parties hereto cannot agree with respect to such modifications or changes, or if the parties cannot agree as to any matter, it is agreed that all such differences shall be determined by arbitration by a board of arbitrators to consist of one person selected by the general sales agent of the buyer and one person selected by the president of the seller, and a third person to be selected by the then president of the Farmers Loan and Trust Company of the City of New York, and that the decision of a majority of such board of arbitration shall be final and binding upon the parties hereto.

"Eighth. Any changes or modifications in the terms, conditions, or covenants of this contract which may hereafter be agreed to may be made by written agreement, duly executed, provided the
440 same be approved by a vote of both the parties hereto acting by a majority of their several boards of directors or managers.

"Ninth. This contract shall become in effect on the beginning of the day of the date hereof upon written notice by either party to the other prior to August 1st, 1910, of its intention to cancel this contract, it shall expire at midnight on the twenty-eighth day of February, 1911. Should no such notice be served, the contract shall continue to be operative until the expiration of six months after either party shall notify the other in writing of its intention to cancel the contract, in which event it shall expire at midnight of the last day of the six months named in the notice of cancellation.

"Upon the expiration of this contract the buyer agrees to sell to the seller or to whomever the sell shall nominate, and it agrees to buy or cause to be bought all coal then stored or in transit purchased of the seller by the buyer at prices to be agreed upon; or in case the parties cannot agree, to be fixed by arbitration as herein provided."

Since August 2, 1909, when this contract was made, the general course of event may be condensed from the testimony of the principal witness in the case: Since that date the Coal Company has conducted the whole business of marketing the coal referred to in the contract, and the railroad has taken no part therein, except to move the coal in obedience to orders received from the Coal Company. Notice of the change of business was promptly given to agents and customers and the trade in general. The railroad sells all its coal to the Coal Company on board cars at the breakers, except such quantity as it uses for its own purposes, or permits to be used by its employees. But the Coal Company buys coal from other persons also, the quantity being 3,847 tons in 1909, 2,267 tons in 1910, 6,600 tons in 1911, 9,204 tons in 1912, and 310,645 tons in the first ten
441 months of 1913. The Coal Company directs the movement of the coal from the breakers (where the title passes from the Railroad Company) until it reaches the numerous markets and customers in Pennsylvania and elsewhere; and the railroad obeys these orders. With the exceptions already noted, the Coal Company has always had a separate board of directors and separate officers. The actual management has also been separate and distinct. The Coal Company has its own officers, and keeps its own

books according to its own method of bookkeeping; and its books relate to its own business. Its funds are deposited in its own name in banks of its own choosing and are subject to its own disposal. Its earnings are computed from its own books, and the profits go solely to its own stockholders. The sales department of the Coal Company is mainly controlled by its vice president and general sales agent, although its president takes some part in the supervision. The sales agents throughout the territory served with the coal are and always have been in the exclusive employ of the Coal Company and are paid solely by that company. And this is true also of the bookkeeping force in the Coal Company's offices. The Government has had access to the books and accounts of the Coal Company, and has offered some extracts therefrom in evidence. The Coal Company has been charged, and has paid, the same rates of freight and demurrage as any other shipper and has received no discriminating favors from the railroad. The transactions of the Coal Company for each of the years 1910, 1911, and 1912 embrace 8,000,000 tons or more, and about $40,000,000.

The Coal Company pays large sums in cash each year to the railroad for coal purchased and for freight. In 1912 the amount paid for coal was nearly $20,000,000, and for freight more than $13,000,000; in 1910 the total of these items was about $34,500,000, and
442 in 1911, $35,000,000. In addition to these sums, the Coal Company paid to other carriers and to agents for salaries and other charges from $2,500,000 to $3,000,000 in each of the years named. For all purposes, the Coal Company has paid to others than the railroad more than $7,000,000 in 1910, and also in 1911, and more than $5,000,000 in 1912.

A rental of five per cent on the estimated cost of the railroad's former storage and trestle facilities is paid by the Coal Company, together with the cost of operation and maintenance. Since August, 1909, the Coal Company has been buying other property at various places—mainly land, buildings, and trestles—at a cost of several hundred thousand dollars, and has been making contracts on its own account to supply certain agents with coal for a definite number of years. It obtains some of its coal from other sources of supply than the Railroad Company, although the railroad is by far the most important source. And finally, it may be noted that several unadjusted differences exist between the two companies, one being the railroad's claim to receive a higher price for its coal.

We are asked to hold that the facts thus set forth do not establish the good faith of the railroad, and therefore to decree that the company's interest in the coal transported continues to exist, in spite of the contract of August 2, 1909, and of the whole course of conduct hereinbefore detailed. The Government prays that we enjoin the defendant from "shipping, transporting, or causing to be transported, any anthracite coal, the product of mines owned by defendant railroad company, or purchased by it from others, and sold, transferred, or delivered to defendant Coal Company, in pursuance of the

above-described agreement or arrangement existing between them, or any similar one." Manifestly, a decree that goes so far and
443 would destroy so much should rest upon well-established facts, and these, in our opinion, have not been proved; the evidence is too slender to justify us in drawing the inferences urged by the Government. On the contrary, believing that we have fairly stated the uncontroverted facts, we shall only add that they appear to lead to these conclusions: That the transactions between the two companies began and have been carried on in good faith, in obedience to the decisions of the Supreme Court and in reliance thereon; that the distinction between the two corporations has not been obliterated; that their affairs have not been so commingled as by necessary effect to make their affairs indistinguishable; and that the two are not one for all purposes, but are two distinct and separate legal beings, actually engaged in separate and distinct operations. It follows that the railroad does not own the coal in question, either in whole or in part, during its carriage, but has in good faith dissociated itself therefrom before the beginning of the act of transportation.

2. But the Government contends further that the Railroad Company retains a direct or indirect interest in the larger sizes of the coal while it is being transported, because the contract contained a provision relating to the price to be paid for these sizes. Coal larger than pea is called "prepared" coal, and for this size the third paragraph of the contract provides that the Coal Company shall pay "sixty-five (65) per cent of the general average free on board prices of said sizes received at tide points at or near New York between Perth Amboy and Edgewater."

The same paragraph makes somewhat similar provisions for ascertaining the price to be paid for the smaller sizes; these are also to be paid for on the basis of certain percentages of the general average free on board prices at tide. It is not contended,
444 however, that the railroad retains any interest in these smaller sizes; the argument is restricted to "prepared" coal, or sizes larger than pea. It is urged that the railroad will be the gainer by a high price at tide, since this will necessarily increase the price at the mines; and therefore that this interest in the price is such an interest in the coal itself as is condemned by the statute. Undoubtedly it is correct to say that the railroad has an interest in the price, but it should be understood that "interest" merely means that the railroad will gain by a higher price at tide, and does not mean that the railroad has power to control the coal or the price for which it sells. It might also be argued—and, indeed, the suggestion is glanced at in the Government's brief—that the price at tide is also affected by the rate of freight, and therefore that the railroad retains an interest in the coal because it can increase the tidewater price by increasing the rate of freight. In theory this argument may be sound, but as a practical consideration it is not entitled to weight, because the railroad can not increase the rate of freight at pleasure, but must accept whatever rate is established by the Interstate Com-

merce Commission. And the other argument, while equally good in theory, is equally ineffective as a practical consideration, because the Railroad Company does not control the price at tide and cannot increase that price, however much it may desire to do so. The Railroad Company does not fix prices; it does not decide how much coal is to go to New York Harbor; and it does not determine the sum for which the coal is to be sold at that point. The average price at tide had its origin a good many years ago when the coal-carrying roads had contracted with numerous mine owners to buy their coal at certain percentages of the average selling price at the harbor.

In order to determine what that price was, records were kept
445 by a bureau organized for that purpose, showing the quantities sold and the prices. This was the situation in 1902, when the notable strike in the anthracite region took place, and one of the terms of the award that settled that struggle was a sliding scale of wages, to be determined by reference to the selling prices reported by the bureau. These prices have been so reported ever since, in accordance with the order of the strike commission, and wages have been computed by reference thereto.

This price at tide afforded the present defendants a convenient basis for calculation. It has certain obvious advantages; the market in New York Harbor is very large, probably the largest single market available; it is served by all the principal coal companies; and the general average of prices obtained there may fairly be regarded as an accurate measure of value at that point. But the purpose of the third paragraph of the contract was to value the coal at the breakers, and the New York price merely afforded a starting point for the computation. The contract declares this purpose distinctly:

"The general average f. o. b. prices herein referred to shall be determined by the general average free-on-board prices received for the various sizes on general market sales thereof at tide points at or near New York between Perth Amboy and Edgewater during each calendar month, and a statement of such prices shall be furnished the buyer by the seller prior to the eighth day of each month, subsequent to that in which such monthly sales shall have been made—the intent of this provision being to ascertain and to fix the market price of the coal at the mines as nearly as may be as of the several and respective days of delivery of the coal at the mines."

We think it clear that the railroad retains nothing more
446 after the title passes to the Coal Company at the mines than an interest in the price, and that this is not the same thing as an interest in the coal. But the commodities clause is dealing with an "interest, direct or indirect," in the commodities themselves, and this must mean some kind or degree of ownership or interest in the thing transported, or some power to deal with it or to control it. We think we have already shown that the Railroad Company neither owns nor controls the coal after it has been loaded on cars at the breakers. Thereafter the Coal Company is the owner and the master, and fixes prices, routes, and destinations, at its own will. The

Railroad Company has parted with its title so completely that it would suffer no loss if thousands of tons should be burnt or otherwise lost in transit. No doubt the railroad will be advantaged whenever the price at tide is high, but the railroad does not increase that price or compel the Coal Company to increase it.

But it seems superfluous to consider the Government's argument further, in view of what was said by the Supreme Court in the Delaware & Hudson case about the meaning of this very phrase—"in which (the railroad) may have any interest, direct or indirect." On page 413 of 213 U. S., the court said:

"It remains to determine the nature and character of the interest embraced in the words, 'in which it is interested, directly or indirectly.' The contention of the Government that the clause forbids a railroad company to transport any commodity manufactured, mined or produced, or owned in whole or in part, etc., by a bona fide corporation in which the transporting carrier holds a stock interest, however small, is based upon the assumption that such prohibition is embraced in the words we are considering. The opposing contention, however, is that interest, direct or indirect, includes only commodities in which a carrier has a legal interest, and therefore
447 does not exclude the right to carry commodities which have been manufactured, mined, produced, or owned by a separate and distinct corporation, simply because the transporting carrier may be interested in the producing, etc., corporation as an owner of stock therein. If the words in question are to be taken as embracing only a legal or equitable interest in the commodities to which they refer, they cannot be held to include commodities manufactured, mined, produced, or owned, etc., by a distinct corporation merely because of a stock ownership of the carrier. Pullman Palace Car Co. v. Missouri Pacific R. R. (115 U. S., 587); Conley v. Mathieson Alkali Works (190 U. S., 406). And that this is well settled also in the law of Pennsylvania is not questioned. It is unnecessary to pursue the subject in more detail, since it is conceded in the argument for the Government that, if the clause embraces only a legal interest in an article or commodity, it can not be held to include a prohibition against carrying a commodity simply because it had been manufactured, mined, or produced, or is owned, by a corporation in which the carrier is a stockholder."

If we remember that this language was used about a situation arising where a railroad itself owned stock (even in a controlling amount) in the producing or owning corporation, and where the railroad would therefore profit directly by the price received for the commodity transported, it hardly seems worth while to argue at any length that where the railroad does not own a single share of such stock it does not have an "interest, direct, or indirect," in the particular commodity thus produced or owned. In such a State of affairs—if we understand correctly what the Supreme Court has said—the interest of the carrier ceases when the commodity is sold and delivered bona fide to a distinct and separate corporation, and

no interest remains, either direct or indirect, merely because the price has not yet been precisely ascertained.

448 3. The bill of complaint also makes a formal charge against both defendants under the antitrust act, but the oral argument left us under the impression that this charge was not much insisted on. We believed then, and have believed since, that, while the Government earnestly desired to obtain a decision concerning the application of the commodities clause to the facts of this case, the antitrust branch of the complaint was regarded as comparatively unimportant. For this reason, therefore, we shall not undertake for the present what we think would be the needless task of discussing the evidence bearing upon the charge of restraining or monopolizing commerce. If we are mistaken in this supposition, however, the error can easily be corrected.

A decree may be entered dismissing the bill; but, as the situation may change in the future and the change may afford the Government ground to assert that the affairs of the two corporations have become unlawfully identified, so as to violate the commodities clause, the dismissal will be without prejudice to the Government's right to begin a second proceeding whenever it may be so advised.

Filed April 7, 1914.

449 In the District Court of the United States for the District of New Jersey.

In equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, AND The Delaware, Lackawanna & Western Coal Company, defendants.

Final decree.

(Filed Apr. 24, 1914.)

This cause having come on for final hearing upon pleadings and proofs, and having been argued by counsel for the respective parties on the 27th day of January, 1914, before the three circuit judges of the Third Judicial Circuit under the provisions of the Act of Congress known as the "Expediting act" of February 11, 1903, and the said pleadings, proofs and arguments having been duly considered by the said judges and the written opinion of the court having been duly filed, it is now, on this 24th day of April, 1914, by the said district court ordered, adjudged, and decreed—

1. That the charge made in the petition herein that the defendant The Delaware, Lackawanna & Western Railroad Company has not since August 2nd, 1909, when the contract of that date between it and the defendant The Delaware, Lackawanna & Western Coal Company went into effect, in a bona fide way before accepting the same for carriage, divested itself of all interest in the anthracite coal

produced at its mines, or under its direction and control, or purchased from others and that it is and has been unlawfully
450 transporting the same in interstate and foreign commerce in violation of the act to regulate commerce, as amended June 29th, 1906, is not sustained, and the petition in respect of that charge is hereby dismissed, but without prejudice to any further proceedings by the petitioner against the defendants for said cause of action.

2. That the charge made in said petition that the existing arrangements and agreements between the defendants set forth in the petition constitute a contract and combination in restraint of trade and commerce among the States, and an attempt to monopolize a part of such trade and commerce contrary to the provisions of the act of July 2nd, 1890, is not sustained, and the petition in respect of that charge is hereby dismissed.

3. That the charge made in said petition that the defendant The Delaware, Lackawanna & Western Railroad Company is purchasing coal for re-sale or for transportation over its lines, as set forth in the petition, and that such purchase is unlawful and necessarily tends to produce a monopoly and unlawfully to hinder and restrain interstate and foreign commerce in that commodity, and constitutes an attempt to monopolize a part of such trade and commerce, is not sustained, and the petition in respect of that charge is hereby dismissed.

4. That in all other respects the said petition is hereby dismissed.

GEO. GRAY,
JOS. BUFFINGTON,
JOHN B. MCPHERSON,
Circuit Judges.

Approved as to form:
WILLIAM S. JENNEY,
Counsel for Defendant.
HOWARD THAYER KINGSBURY,
Counsel for Pet'r.

451 In the District Court of the United States for the District of New Jersey.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND The Delaware, Lackawanna & Western Coal Company, defendants.

Order to vacate order allowing appeal entered April 24, 1914, etc.

(Filed May 26, 1914.)

On motion of the United States of America, petitioner herein, the order allowing an appeal in this cause, entered on the 24th day of April, 1914, is hereby vacated; and the petition for appeal and the

assignments of errors heretofore filed on the said 24th day of April, 1914, are hereby stricken from the record.

JOHN B. MCPHERSON,
Circuit Judge.

May 26th, 1914.

452 In the District Court of the United States for the District of New Jersey.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND The Delaware, Lackawanna & Western Coal Company, defendants.

Assignments of error.

(Filed May 26, 1914.)

Comes now the United States of America, petitioner, by counsel, and makes and files this, its assignments of error herein.

The court erred—

1. In failing and refusing to sustain in its entirety the original petition and in dismissing the same as to any charge therein or as to any defendant.

2. In failing and refusing to sustain the charge of the original petition that the transportation of anthracite coal in interstate commerce by the defendant The Delaware, Lackawanna & Western Railroad Company under the circumstances stated in the petition is in violation of the act to regulate commerce as amended June 29, 1906; and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

3. In failing and refusing to sustain the charge of the original petition that the defendant The Delaware, Lackawanna & Western Railroad Company is transporting in interstate commerce anthracite coal mined and purchased by it, and in which it has an interest at the time of transportation, in violation of the act to regulate commerce as amended June 29, 1906, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

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4. In failing and refusing to sustain the charge of the original petition that the defendant The Delaware, Lackawanna & Western Railroad Company since August 2, 1909, when the contract of that date between it and the defendant The Delaware, Lackawanna & Western Coal Company went into effect, has not bona fide divested itself of all interest in anthracite coal produced by it or under its direction or control or purchased from others before accepting the same for carriage; and that it has been unlawfully transporting the same in interstate and foreign commerce in violation of the act to regulate commerce as amended June 29, 1906; and in failing and refusing to grant appropriate relief thereunto and in dismissing the petition as to that charge.

5. In failing and refusing to find and adjudge that through the means of determining the selling price prescribed in the aforesaid contract of August 2, 1909, the defendant The Delaware, Lackawanna & Western Railroad Company retains an interest in the coal during the time of transportation.

6. In failing and refusing to enjoin the defendant The Delaware, Lackawanna & Western Railroad Company from transporting in interstate or foreign commerce any anthracite coal produced by it or purchased by it from others and sold, transported, or delivered to the defendant The Delaware, Lackawanna & Western Coal Company in pursuance of the aforesaid agreement dated August 2, 1909, or any similar agreement or arrangement.

454 7. In failing and refusing to sustain the charge of the original petition that the existing agreements and arrangements therein set forth between the defendants constitute a contract and combination in restraint of trade and commerce amongst the States and an attempt to monopolize a part of such trade and commerce contrary to the act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

8. In failing and refusing to sustain the charge of the petition that the provisions in the aforesaid agreement of August 2, 1909, for determining the amount to be paid the defendant The Delaware, Lackawanna & Western Railroad Company on account of the coal transferred by it to the defendant The Delaware, Lackawanna & Western Coal Company constitute a restraint of interstate and foreign trade and commerce contrary to the act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

9. In failing and refusing to sustain the charge of the original petition that the defendant The Delaware, Lackawanna & Western Railroad Company in purchasing coal for resale or for transportation over its lines, as set forth in the petition, was and is attempting to monopolize and has monopolized and restrained interstate and foreign trade and commerce in that commodity contrary to the act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

10. In failing and refusing to find and adjudge to be unlaw-
455 ful the purchase of coal by the defendant The Delaware, Lackawanna & Western Railroad Company from others and the sale or transfer of the same to the defendant The Delaware, Lackawanna & Western Coal Company or others, and in failing and refusing to enjoin any such actions or dealings in the future.

11. In failing and refusing to find and adjudge that the defendants The Delaware, Lackawanna & Western Railroad Company and The Delaware, Lackawanna & Western Coal Company are but instrumentalities of the same group of stockholders, and that the arrangements and contracts by and between them as set forth in the petition are but devices to avoid and evade the prohibitions of the act to regulate commerce as amended June 29, 1906.

12. In failing and refusing to dismiss the entire petition without prejudice, if dismissed at all, and in failing to adjudge all costs in favor of the petitioner.

FRANCIS FISHER KANE,
United States Attorney.
J. WARREN DAVIS,
By F. F. KANE,
United States Attorney, Dist. of New Jersey.
JAMES C. MCREYNOLDS,
Attorney General.
JOHN W. DAVIS,
Solicitor General.

456 In the District Court of the United States for the District of New Jersey.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND The Delaware, Lackawanna & Western Coal Company, defendants.

Petition for appeal.

(Filed May 26, 1914.)

The United States of America, petitioner, feeling itself aggrieved by the final decree entered in the above-entitled cause on the 24th day of April, 1914, by its counsel comes into open court and prays an appeal therefrom to the Supreme Court of the United States.

The particulars wherein the petitioner considers the said decree erroneous are set forth in the assignments of error herewith filed, to which reference is made.

And the United States further prays that a transcript of the record, proceedings, and papers on which the decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States; and it further prays, pursuant to No. 75 of the Rules of Practice in Equity promulgated by the Supreme Court of the United States, effective February 1, 1913, that the testimony may be reproduced in the transcript of record in the exact words of the witnesses.

J. WARREN DAVIS,
By F. F. KANE,
U. S. Attorney for District of New Jersey.
FRANCIS FISHER KANE,
United States Attorney, Eastern District of Pennsylvania.
JAMES C. MCREYNOLDS,
Attorney General.
JOHN W. DAVIS,
Solicitor General.

Allowed in open court May 26th, 1914.
JOHN B. MCPHERSON,
Circuit Judge.

457 In the District Court of the United States for th' District of New Jersey.

THE UNITED STATES OF AMERICA, PETITIONER,

v.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND The Delaware, Lackawanna & Western Coal Company, defendants.

Order allowing appeal.

(Filed May 26, 1914.)

Be it remembered that in the above-entitled cause on this 26 day of May, 1914, the United States of America, petitioner, appearing by counsel in open court, presented and caused to be filed its petition praying an appeal to the Supreme Court of the United States from the final decree entered herein on the 24th day of April, 1914, and at the same time presented and caused to be filed its assignment of errors, all as required by the Statute and Rules of Court.

On consideration thereof, the court ordered and decreed that the appeal be allowed as prayed; and the clerk was directed to transmit forthwith to the Supreme Court of the United States a properly authenticated transcript of the record, papers, and proceedings. It was further ordered that the testimony be reproduced in the transcript of record in the exact words of the witnesses.

JOHN B. MCPHERSON,
Circuit Judge.

458 In the District Court of the United States for the District of New Jersey.

THE UNITED STATES OF AMERICA, PETITIONER,

v.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND the Delaware, Lackawanna & Western Coal Company, defendants.

Order.

(Filed May 26, 1914.)

It is ordered by the court that, in making up the transcript of the record in this case, pursuant to the order of appeal herein entered on the twenty-fourth day of April, 1914, the testimony herein be reproduced in said transcript in the exact words of the witnesses.

JOHN B. MCPHERSON,
Circuit Judge.

459 *Clerk's certificate.*

UNITED STATES OF AMERICA,
District of New Jersey, ss:

I, George T. Cranmer, clerk of the District Court of the United States for the District of New Jersey, do hereby certify the foregoing to be the record on appeal in the case of United States of America vs. Delaware, Lackawanna & Western Railroad Co. and Delaware, Lackawanna & Western Coal Co.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Trenton, in said District, this third day of June, 1914.

[SEAL.] GEORGE T. CRANMER,
Clerk.
By R. S. CHEVRIER, *Deputy.*

460 UNITED STATES OF AMERICA, *ss:*

To The Delaware, Lackawanna & Western Railroad Company and The Delaware, Lackawanna & Western Coal Company:

Whereas The United States of America has lately appealed to the Supreme Court of the United States from a final decree lately rendered in the District Court of the United States for the District of New Jersey, made in favor of you, the said The Delaware, Lackawanna & Western Railroad Company and The Delaware Lackawanna & Western Coal Company; you are therefore hereby cited to appear before the said Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the twenty-fourth day of June, 1914, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Philadelphia, in the third circuit, the 5th day of June, 1914.

JOHN B. MCPHERSON,
Judge.

Service of a copy of the within citation acknowledged this 8th day of June, 1914.

JOHN G. JOHNSON,
Solicitor for D. L. & W. Coal Co.

Service of a copy of the within citation acknowledged this sixth day of June, 1914.

J. L. SEAGER,
Solicitor for D. L. & W. R. R. Co.

461 (Indorsed:) 1108-24259. United States Supreme Court. United States of America vs. Delaware, Lackawanna & West-

ern Railroad Company and Delaware, Lackawanna & Western Coal Company. Citation.

(Indorsement on cover:) File No. 24259. New Jersey, D. C. U. S. Term No. 517. The United States, appellant, vs. The Delaware, Lackawanna & Western Railroad Company and the Delaware, Lackawanna & Western Coal Company. Filed June 6th, 1914. File No. 24259.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1914

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, APPELLANT,
v.
THE DELAWARE, LACKAWANNA & WESTERN Railroad Company and The Delaware, Lackawanna & Western Coal Company.
No. 1108.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and moves the court to advance this cause for hearing on a day convenient to the court during the next term.

This is a suit in equity brought to restrain certain alleged violations of the Antitrust Act of July 2, 1890, 26 Stat. 209, and of the "commodities clause" of section one of the Act to Regulate Commerce as amended June 29, 1906, 34 Stat. 584.

The petition alleges, in substance, that the defendant, The Delaware, Lackawanna & Western Railroad Company, is a common carrier, subject to the provisions of the Act to Regulate Commerce, and

also engaged, as authorized by its charter, in the business of mining anthracite coal; that the defendant, The Delaware, Lackawanna & Western Coal Company, is a corporation organized in 1909 at the instance of the Railroad Company and under the substantial ownership and control of the same individuals; that the defendant companies on the 2d of August, 1909, entered into a contract in writing whereby, *inter alia*, the Railroad Company agreed to sell and the Coal Company to buy all the coal thereafter to be mined by the Railroad Company or purchased by it from others—except so much as it might retain for its own use as a common carrier—at a specified percentage of the general average price at tide points at or near New York, between Perth Amboy and Edgewater. The Coal Company is averred to be a mere instrumentality for retaining under the same control the business of selling coal theretofore carried on by the Railroad Company; the contract in question, a device to avoid the prohibitions of the Interstate Commerce Act; and the arrangements and agreements between the companies, a contract and combination in restraint of trade and commerce among the States and an unlawful attempt to acquire a monopoly.

Answers were filed by the defendants, testimony taken, and the cause heard under the Expediting Act. On April 24, 1914, a decree dismissing the petition was entered, and the United States now appeals.

The case is one of general public importance, and it is believed that the questions involved should be settled as promptly as possible.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

JUNE, 1914.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 517.

THE UNITED STATES, APPELLANT,

v.

THN DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND THE DELAWARE, LACKAWANNA & WESTERN COAL COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a direct appeal, under the so-called Expediting Act, 32 Stat., 823, c. 544; 36 Stat., 854, c. 428, from a decree of the United States District Court for the District of New Jersey, dismissing a bill filed by the United States to enjoin The Delaware, Lackawanna & Western Railroad Company, hereinafter called the Railroad Company, from transporting in interstate commerce, in alleged violation of the Commodities Clause, 34 Stat., 584, c.

3591, anthracite coal mined and purchased by it; and to have declared void, as in violation of the Federal Anti-Trust Act, 26 Stat., 209, c. 647, a contract pretending to transfer title to the coal before transportation to The Delaware, Lackawanna & Western Coal Company, hereinafter called the Coal Company.

The case was heard on the bill, the answers, and the evidence offered by the Government, which consisted of statements and documents obtained from the defendants and the testimony of two of their officers.

Whilst in form a new and independent suit, in effect it is a proceeding to enforce a prior decision of this Court declaring that the Railroad Company is prohibited by the Commodities Clause from transporting in interstate commerce anthracite coal mined and purchased by it in Pennsylvania, unless it shall have "in good faith before the act of transportation dissociated itself from such article or commodity." *United States* v. *Delaware & Hudson Co., United States* v. *Delaware, Lackawanna & Western Railroad Co.*, 213 U. S., 366, 415.

The Commodities Clause, which was enacted June 29, 1906, as part of Section 1 of the Act to Regulate Commerce, 34 Stat., 584, 585, c. 3591, is as follows:

> From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia

> to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own, in whole or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

The essential facts are not in dispute.

The Railroad Company operates a railroad from New York Harbor, across New Jersey and Pennsylvania, to the anthracite mines in the last-named State, and thence to Buffalo, together with branch lines, over which anthracite coal in large quantities is transported in interstate commerce. (Rec., 374, 375.)

It also owns and operates anthracite mines and purchases at the mines the output of other operators. (Rec., 4, 375, 376.) At the time the Commodities Clause went into effect it was transporting principally to interstate markets for itself as shipper and owner the coal thus mined and purchased by it. (Rec., 375, 376.)

It refused to obey the command of the statute to desist from such transportation, contending that the statute was unconstitutional, and, therefore, of no effect. On May 3, 1909, this Court overruled that contention, and, as above stated, adjudged that it was a violation of the statute for a railroad

company to transport in interstate commerce anthracite coal mined and purchased by it and from which it had not "in good faith before the act of transportation dissociated itself." *United States* v. *Delaware & Hudson Co., United States* v. *Delaware, Lackawanna & Western Railroad Co.,* 213 U. S., 366, 415.

Thereafter the Railroad Company continued to mine and purchase coal and to transport the coal so mined and purchased in interstate commerce. It claims, however, to have complied with the decision of this Court by dissociating itself from the coal "in good faith before the act of transportation." The pretended dissociation was carried out as follows:

At a special meeting of the managers of the Railroad Company, held June 22, 1909, a resolution was adopted directing the officers of the Company to execute in the form therein set out a contract "for the sale of all coal mined and purchased by the Company within the State of Pennsylvania" to a coal company to be thereafter organized. (Rec., 5, 26, 72, 73.) The form of contract was prepared by the General Counsel of the Railroad Company. (Rec., 7.)

At the same meeting the managers of the Railroad Company declared a special cash dividend of 50 per cent, payable July 20, 1909, to stockholders of record on July 1, 1909, for the admitted purpose of enabling them to subscribe to the capital stock of the proposed coal company. (Rec., 73, 381.)

On June 29, 1909, after consultation with officers of the Railroad Company, and under the direction and advice of the General Counsel of the Railroad Company and Mr. Francis Lynde Stetson, whose employment was suggested at a meeting of the Executive Committee of the Railroad Company, the coal company contemplated in the resolution adopted by the Board of Managers of the Railroad Company on June 22, 1909, was incorporated in New Jersey under the name, "The Delaware, Lackawanna & Western Coal Company," with an authorized capital stock of $6,800,000, divided into shares of $50 each, of which $6,590,700 has been issued and is outstanding. (Rec., 4, 7, 8, 27, 143, 146, 387.)

The incorporators were William Fahnestock, one of the Board of Managers of the Railroad Company; Edward E. Loomis, Vice President of the Railroad Company; and Percy R. Pyne, 2d, son of a member of the Board of Managers of the Railroad Company. (Rec., 33, 34, 146, 293.)

On June 30, 1909, the incorporators elected as the first Board of Directors of the Coal Company William H. Truesdale, President of the Railroad Company; Edward E. Loomis, Vice President of the Railroad Company; four sons of members of the Board of Managers of the Railroad Company; and one of the lawyers who assisted in the organization of the Company. (Rec., 33, 34, 64, 66, 293.) These were suggested by the Vice President and the General Counsel of the Railroad Company as men who

would be satisfactory to the stockholders of the Railroad Company. (Rec., 35.)

Loomis was also elected President of the Coal Company. He continued as Vice President of the Railroad Company. (Rec., 33, 382.) Daniel E. Russell, General Sales Manager of the coal department of the Railroad Company, was elected Vice President and General Sales Agent of the Coal Company. (Rec., 33.) J. J. Owens, an employee in the office of the Treasurer of the Railroad Company, was elected Secretary and Treasurer of the Coal Company. (Rec., 33.) Russell and Owens apparently withdrew from the service of the Railroad Company. John F. Birmingham, Chief Clerk and Secretary to Vice President Loomis, of the Railroad Company, was elected Auditor of the Coal Company. (Rec., 90, 92.) He continued to hold his position with the Railroad Company and testified that he was the connecting link between the mining department of the Railroad Company and the Coal Company. (Rec., 92, 94.) W. S. Jenney, General Counsel of the Railroad Company, became also General Counsel of the Coal Company. (Rec., 68, 233, 304.)

On July 1, 1909, the Secretary and Treasurer of the Railroad Company addressed to its stockholders a circular, which, after notifying them of the before-mentioned declaration of a special dividend of 50 per cent, stated:

> In conformance with the decision recently rendered by the United States Supreme

Court, declaring that this Company can not lawfully transport in interstate commerce coal owned by it, a coal-selling company has been organized under the laws of the State of New Jersey, under the name of Delaware, Lackawanna & Western Coal Company, the capital stock of which will be $6,800,000.00, divided into 136,000 shares of $50.00 each par value.

It is proposed that the Delaware, Lackawanna & Western Railroad Company, as the Seller, shall contract with said Coal Company, as the Buyer, to sell and deliver the coal mined and purchased by the Railroad Company to the Coal Company at the mines.

The circular then "invited" the stockholders of the Railroad Company—

to subscribe to the capital stock of the Coal Company at the rate of 1 share of the latter for each 4 shares of the capital stock of the Railroad Company. (Rec., 9, 10, 11, 61.)

Attached to the circular was the following form of subscription prepared by the General Counsel of the *Railroad* Company and Mr. Stetson:

FORM OF SUBSCRIPTION.

Mr. A. D. CHAMBERS,
Secretary and Treasurer,
Del., Lack. & Western Railroad Co.,
90 West Street, New York.

DEAR SIR: I, the undersigned, hereby subscribe hereto my name, post-office address, and the number of shares of stock at the par

value of Fifty Dollars ($50.00) each, which I agree to take in the Delaware, Lackawanna & Western Coal Company, a corporation organized under the laws of the State of New Jersey, with a capital stock of $6,800,000.00, consisting of 136,000 shares, and I hereby agree to pay for such stock in cash, and hereby authorize and direct A. D. Chambers, as Treasurer of the Delaware, Lackawanna & Western Railroad Company, to pay to the Treasurer of said Delaware, Lackawanna & Western Coal Company the sum of $———, being one-half of the amount of the dividend of fifty per cent. due me upon the stock held by me in the Delaware, Lackawanna & Western Railroad Company on July 1st, 1909. Such sum is in full payment of such subscription and I hereby acknowledge receipt of one-half of such dividend of fifty per cent. and release and discharge the Delaware, Lackawanna & Western Railroad Company of all claims and demands therefor.

Dated, 1909.

Name of Subscriber Post-Office Address No. Shares subscribed.

Witness to signature.

(Rec., 9, 11.)

As required by the form, the subscriptions were sent to the Secretary and Treasurer of the *Railroad* Company, accompanied by an order directing him to pay to the Treasurer of the Coal Company one-half of the special cash dividend of 50 per cent payable to the subscribers as stockholders of the Railroad Company. (Rec., 9, 11, 13.) Thus, an

officer of the *Railroad* Company was the agent for receiving subscriptions to the stock of the Coal Company, whilst the capital of the Coal Company came directly out of the treasury of the *Railroad* Company.

The plan of subscription was so arranged that, first, one-half of the special dividend payable to the stockholders of the Railroad Company would exactly pay for the shares of the Coal Company to which they were entitled to subscribe; and, second, if all the stockholders of the Railroad Company should subscribe, they would hold practically the entire stock of the Coal Company in the same proportions that they held that of the Railroad Company.

The holders of 99½ per cent of the stock of the Railroad Company subscribed to the stock of the Coal Company. (Rec., 12, 287.) Six months later certain employees of the Coal Company were permitted to subscribe to 1,000 of the few remaining shares on condition that they would not sell them within 5 years. (Rec., 58, 59, 70.) With this exception, no persons other than stockholders of the Railroad Company were permitted to subscribe to the stock of the Coal Company. (Rec., 58.) Thus, fulfilling the design, substantially the same persons came to hold the stock of both companies, and in the same proportions.

On July 1, 1909, when only $12,550 of its capital stock had been subscribed, the directors of the Coal

Company, at their first meeting, authorized the officers of the Company to execute the contract theretofore prepared by the Counsel of the Railroad Company and proposed by the Managers of the Railroad Company at their meeting of June 22, 1909, prior to the incorporation of the Coal Company. (Rec., 5, 6, 68, 69.)

On August 2, 1909, this contract was executed by the officers of both Companies. (Rec., 6.) It is reproduced in the Record (pp. 364–372) and in substance provided as follows:

(1) The Railroad Company agreed to sell to the Coal Company all mined, marketable coal then owned by it (except what it might need for its own use as a common carrier), to be paid for within 30 days at prices designated. (Rec., 365.)

(2) The Railroad Company agreed to lease to the Coal Company its selling facilities, including storage and stocking plants, trestles, pockets, piers, and docks, for an annual rental of 5 per cent of their agreed value (Rec., 366); and the Coal Company agreed to take over certain leases of trestles, sales agency contracts and contracts for the sale of coal theretofore made by the Railroad Company. (Rec., 367–368.)

(3) The Railroad Company agreed to sell and deliver to the Coal Company, f. o. b. cars at the mines, all coal thereafter mined or purchased by the former (except what it may need for its own use as a common carrier, or may sell to its own employees at

the breakers), the amount so sold and delivered, however, to be "*at the absolute option of the seller [the Railroad Company] as its interests may determine, and the seller shall be subject to no liability whatsoever for failure to supply the buyer [the Coal Company] with such amount of coal as it may desire.*" (Rec., 368.) [Italics ours.]

(4) The Coal Company agreed to purchase *all* such coal offered by the Railroad Company (Rec., 368); and to pay for all sizes above pea, 65 per cent of the general average f. o. b. prices at New York Harbor, and for the smaller sizes a smaller percentage. (Rec., 369, 370.)

(5) The Coal Company agreed that the coal might be prepared "in accordance with the past practices and standards" of the Railroad Company. (Rec., 370.)

(6) The Coal Company agreed that "*it will purchase all coal to be sold by it from the seller [the Railroad Company], and will purchase no coal from any other person or corporation* except with the written consent of the seller," reserving only the right to purchase from others the coal necessary to fill certain existing contracts in the event of the failure of the Railroad Company to sell to it. (Rec., 368.) [Italics ours.]

(7) The Coal Company agreed to conduct the business of selling so "as best to conserve the interests of and preserve the good will and markets of the coal mined by the seller [the Railroad Company]." (Rec., 370.)

(8) The Coal Company agreed "to continue to fill the orders of all responsible present customers of the seller [the Railroad Company], even though as to some of such customers the sales may be unprofitable." (Rec., 370.)

(9) Any disputes arising between the parties shall be settled by arbitration; and if warranted by changes in conditions, the terms of the agreement itself may be modified by arbitration. (Rec., 370, 371.)

(10) The term of the contract is indefinite. Either party may cancel it, however, by giving six months' notice. (Rec., 371.)

(11) The Coal Company agreed that in the event of the ending of the contract, it will sell back to the Railroad Company or its nominee, at prices to be agreed upon, all coal then stored or in transit purchased from the Railroad Company by the Coal Company. (Rec., 371.)

On the same day that this contract was executed and in accordance with a provision thereof, the Railroad Company leased to the Coal Company the storage and stocking plants, trestles, pockets, piers and docks theretofore used by the former in marketing coal. The lease was for an indefinite term, subject, however, to cancellation by either party upon giving six months' notice. It cannot be assigned by the Coal Company without the consent of the Railroad Company. (Rec., 52, 53, 240, 246, 247.)

Still on the same day, the employees of the coal sales department of the Railroad Company were transferred in a body to the Coal Company, which thereupon actively commenced business. (Rec., 13, 23, 24.)

The business of the Coal Company has been conducted always from offices leased from the Railroad Company and in large part occupied by the two companies in common. (Rec., 23, 24, 242, 255, 256.)

The relations thus established between the Railroad Company and the Coal Company have continued without material change.

The contract of August 2, 1909, is still in full force and effect.

Whilst some stockholders of the Railroad Company have disposed of their shares in the Coal Company, and vice versa, the community of ownership remains substantially intact. The owners of all but 88,716 shares of the Railroad Company own all but 6,907 shares of the Coal Company (Rec., 40); that is to say, the owners of 85 per cent of the shares of the Railroad Company (Rec., 40, 151–185, 333) own 95 per cent of the shares of the Coal Company. (Rec., 40, 185–213, 279.)

Again, the actual control of the two companies remains in a few hands. Twenty-nine[1] persons

[1] Wm. Waldorf Astor; Geo. F. Baker; C. Ledyard Blair; Geo. Blumenthal; Josephine Brooks; Amos F. Eno; H. C. Fahnestock; Fahnestock & Co.; Farmers Loan & Trust Co.,

hold 303,773 shares of the Railroad Company—a majority (Rec., 44, 45, 333), and also 67,997 shares of the Coal Company—a majority (Rec., 45, 46).

The President and the Vice President of the Railroad Company, and four sons of members of the Board of Managers of the Railroad Company, one of whom is now himself a member, are still directors of the Coal Company. (Rec., 62, 66, 278, 326.) Mr. George Blumenthal, a large stockholder of both companies, has become the seventh director in place of the lawyer who assisted in the organization of the Company. (Rec., 33, 34, 44, 45.)

Edward E. Loomis is still President of the Coal Company and at the same time Vice President of the Railroad Company; John F. Birmingham is still Auditor of the Coal Company and at the same time Chief Clerk and Secretary to the Vice President of the Railroad Company; W. S. Jenney is still General Counsel of both companies. The

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Trustee; Fidelity-Phenix Fire Ins. Co.; Henry Graves, Jr., & Geo. Coe Graves, Trustees for Henry Graves; Eugene Higgins; William H. Moore; Catharine T. Moulton; Thos. J. Mumford; Mutual Life Ins. Co.; Maud Howland Pyne; Moses Taylor Pyne; John F. Talmage; Cath. A. Taylor, P. R. Pyne, M. T. Pyne, L. Turnure, Trustees for Kate M. Winthrop; Cath. A. Taylor, P. R. Pyne, M. T. Pyne, L. Turnure, Trustees for Henry A. C. Taylor; Florence A. V. Twombly; Union Trust Co. of N. Y., Trustee; Frederic E. Lewis; Percy P. Lewis; Fred J. Lovatt; F. W. Vanderbilt; W. K. Vanderbilt; Frank Work, Dec. (Rec., 44.)

other officers of the Coal Company also remain the same. (Rec., 17, 33, 92, 278, 326.)

The answer of the Coal Company states that its annual sales of anthracite coal amount to from 6,000,000 to 8,000,000 tons, all secured from and transported by the Railroad Company; and that four-fifths of such sales are made outside Pennsylvania. (Rec., 393, 394.) The shipments of the Coal Company constitute nearly all the anthracite coal transported by the Railroad Company. (Rec., 51, 111, 112, 329, 337, 393.)

The profits of both Companies have been very large. In 1908, before the organization of the Coal Company, the Railroad Company had a capital stock of $26,200,000 and a surplus of $34,638,995.88. (Rec., 287.) Since then it has paid regular dividends of 10 per cent per annum and seven extra dividends aggregating 140 per cent—in all dividends of 180 per cent. (Rec., 296, 301, 307, 318, 323, 329.) On December 31, 1912, its capital stock was $30,277,000 and its surplus $29,515,902.20. (Rec., 333.)

The Coal Company commenced business on August 2, 1909, with a capital stock of $6,590,700. By December 31, 1912, in addition to having paid dividends aggregating $2,141,961.25, it had accumulated a surplus of $4,498,382.75. (Rec., 126, 235, 280.)

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THE QUESTIONS.

The assignments of error are set out in full at pages 430–432 of the Record. Those principally relied upon by the Government raise the following questions:

1. Has the Railroad Company by the arrangements above described dissociated itself in good faith before transportation from coal mined and purchased by it, as required by the Commodities Clause?

2. Does the contract of August 2, 1909, between the Railroad Company and the Coal Company violate the Federal Anti-Trust Act?

THE ARGUMENT.

First Point.

THE RAILROAD COMPANY, WHILST CONTINUING TO TRANSPORT IN INTERSTATE COMMERCE ANTHRACITE COAL MINED AND PURCHASED BY IT, HAS NOT IN GOOD FAITH DISSOCIATED ITSELF THEREFROM BEFORE THE TRANSPORTATION, AND THEREFORE IS CONTINUING TO VIOLATE THE COMMODITIES CLAUSE.

I.

In *United States* v. *American Tobacco Co.*, 221 U. S., 106, 181, this Court in construing the Federal Anti-Trust Act stated that—

> there was no possibility of frustrating that policy [the policy of the Anti-Trust Act] by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute.

We invoke that principle in the present case to strike down an attempt to evade by indirection the prohibitions of the Commodities Clause—an attempt which if successful would make a mockery of what was intended to be a great remedial statute.

One other preliminary consideration. Of course, when a transaction violates a constitutional enactment of Congress, as the Commodities Clause has been held to be, it is wholly immaterial whether or not the transaction was authorized by State law. *Northern Securities Case,* 193 U. S., 197, 346; *Union Pacific Case,* 226 U. S., 61, 86. Nevertheless, it is of interest that whilst many years ago, when both steam transportation and anthracite coal mining were in their infancy, Pennsylvania did authorize a few railroads, amongst them the defendant, to occupy "the dual and inconsistent position of public carrier and private shipper," since 1874 the present policy of the Nation in that regard, expressed in the Commodities Clause, has been the policy of Pennsylvania, as evidenced by its Constitution:

> No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold, or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business;

> but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length. (Const., Pa., adopted Nov. 3, 1873, effective Jan. 1, 1874, Art. XVII, Sec. 5; Rec., 349.)

As Judge Buffington said of this provision in the first *Commodities Clause Case* (164 Fed., 215, 253),

> certain it is it strips every purchase in Pennsylvania since 1874 of mining properties by common carriers of the status of innocent purchases, * * *.

One-half of the Railroad Company's entire holdings of anthracite coal lands admittedly were acquired after January 1, 1874 (Ans., Rec., 374).

II.

In prescribing as a test of the application of the Commodities Clause, "dissociation of the carrier *in good faith* from the articles transported," we do not understand that this Court had reference merely, or chiefly, to the honesty or morality of the transaction, but rather to its genuineness, its reality.

What constitutes " dissociation " in this sense has not been defined, and doubtless, like " fraud," " undue discrimination," " unreasonable rates," and other similar conceptions in the law, is incapable of exact definition. This Court has very emphatically indicated, however, that there can be

no such thing as a " dissociation " which accomplishes " by indirection that which the Commodities Clause prohibits." *United States* v. *Lehigh Valley Railroad Co.*, 220 U. S., 257, 274. Each case must be determined upon its own facts. Clearly the mere transfer of legal title to another corporation is not equivalent to dissociation, particularly where that corporation is separate from the carrier only in the sense that its bookkeeping is separate. If a carrier engaged in mining coal retains substantial dominion over it, no matter in what form, the evil condition which it was the purpose of the Commodities Clause to correct remains and there is no real dissociation of the carrier from the coal.

In determining in a given case whether a carrier has dissociated itself in good faith from articles produced by it, a correct view of the purpose of the Commodities Clause is essential.

In the present case the Railroad Company acted on the view that the Commodities Clause was " enacted for the sole purpose of preventing discrimination between shippers." (See Def't's Br. below, p. 38.) That is a mistake. The law already prohibited such discrimination in whatever form. The Commodities Clause, whilst intended to fortify the existing law in that regard, also had a broader purpose. It is a legislative expression of the conception that, regardless of any question of discrimination, for a railroad company directly or indirectly to be a shipper over its own lines in competition with other shippers is of itself an evil which should be pro-

hibited, because the power, the profits and the greater command of capital enjoyed by a railroad company *as a public carrier* put other shippers over its lines at a hopeless disadvantage in competing with it. This has long been the theory of the common law. *Attorney General* v. *Great Northern Railway Co.*, 29 Law Journal (N. S. Eq.) 794, cited with approval in *New Haven Railroad Co.* v. *Interstate Commerce Commission*, 200 U. S., 361, 393.

In two very recent cases this Court recognized this broad underlying purpose of the Commodities Clause. In *Delaware, Lackawanna & Western Railroad Co.* v. *United States*, 231 U. S., 363, 370, it said:

> The Commodities Clause was * * * intended to cure or prevent the evils that might result if, in hauling goods in or out, the company occupied *the dual and inconsistent position of public carrier and private shipper.* [Italics ours.]

Again, in the *Tap Line Cases*, 234 U. S., 1, 27, the object of the Clause was stated to be—

> to divorce transportation from production and manufacture and to make transportation a business of and by itself unallied with manufacture and production in which a carrier was itself interested, * * *.

III.

The contention of the Government that the Railroad Company has not completely dissociated itself from the coal before transportation is based on the

arrangements between the Railroad Company and the Coal Company viewed *as a whole* and not upon any one feature of them. This plainly appears from the original petition. (Rec., 346–364.)

The District Court mistakenly assumed that the Government based its case solely or almost solely upon the fact that the Railroad Company and the Coal Company have the same controlling stockholders. It said (Rec., 415):

> * * * as these individuals [the subscribers to the stock of the Coal Company] were also stockholders of the Railroad Company, the Government contends (*almost solely for this reason*) that the two corporations are in effect identical and can not be regarded as distinct. If this ground be not well taken, scarcely anything is left of the Government's case—certainly nothing that would support a decree. [Italics ours.]

And, citing *United States* v. *Delaware & Hudson Co.*, 213 U. S., 366, and *United States* v. *Lehigh Valley Coal Co.*, 220 U. S., 257, 266, it continued (Rec., 416):

> We may therefore assert with confidence that since the Railroad itself may own stock in the producing or owning corporation without offending against the statute, no offense is committed although individual subscribers to such stock may also be stockholders in the Railroad. No act of Congress or judicial decision has declared it to be illegal for an individual citizen to invest his

money in two enterprises, merely because the enterprises may be closely connected.

The Court gave little or no attention to other elements of the case negativing dissociation, though it is not too much to say that if the element of community of stock ownership, important as it is, were absent altogether, the Government would contend with confidence that the relations between the Railroad Company and the Coal Company in other respects, particularly as regards the contract of August 2, 1909, are wholly inconsistent with a real dissociation of the Railroad Company from the coal mined and purchased by it.

Let us then view as a whole the arrangements between the Railroad Company and the Coal Company with as little repetition as possible of the facts already stated.

IV.

In the first place, whilst taking no formal corporate action to that end, the facts establish beyond question that the Railroad Company procured the organization of the Coal Company (*supra,* pp. 4, 5).

The resolution of the Board of Managers of the Railroad Company authorizing the contract for the sale to the Coal Company of the coal mined by the Railroad Company was adopted a week before the incorporation of the Coal Company, and necessarily, therefore, in contemplation of its incorporation (Rec., 72; *supra,* pp. 4, 5).

The officers of the Railroad Company were consulted with regard to the organization of the Coal Company, and the actual work of organization was done under the direction of the General Counsel of the Railroad Company and another lawyer whose employment was suggested at a meeting of the Executive Committee of the Railroad Company (*supra*, p. 5).

The incorporators of the Coal Company were the Vice-President of the Railroad Company, a member of the Board of Managers of the Railroad Company, and a son of another member (*supra*, p. 5).

The Board of Directors of the Coal Company has always consisted of the President of the Railroad Company, the Vice-President of the Railroad Company, four sons of members of the Board of Managers of the Railroad Company, and one other person (*supra*, pp. 5, 14).

Subscribers to the stock of the Coal Company sent their subscriptions to an officer of the Railroad Company in accordance with directions received from the Railroad Company (*supra*, pp. 6, 7, 8).

The Vice-President of the Railroad Company has always been President of the Coal Company. The General Counsel of the Railroad Company has always been General Counsel of the Coal Company. The Chief Clerk and Secretary to the Vice-President of the Railroad Company has always been Auditor of the Coal Company. He is the connecting link between the mining department of the

Railroad Company and the Coal Company. The Vice-President and General Sales Agent of the Coal Company was formerly the General Sales Manager of the coal department of the Railroad Company. The Secretary and Treasurer of the Coal Company was formerly an employee in the office of the Treasurer of the Railroad Company (*supra*, pp. 6, 14, 15).

The statement in the answer of the Railroad Company that the Coal Company was not organized—

> at its direction, or by representatives or nominees of it, or of those controlling its affairs,

but—

> under and pursuant to the direction of counsel employed by persons acting solely on behalf of said Coal Company (Rec., 380, 381).

is directly in conflict with the foregoing facts and the explicit testimony of the General Counsel of the Railroad Company, as follows:

> Q. Did you have to do with the formation and organization of the Delaware, Lackawanna and Western Coal Company, Mr. Jenney?
>
> A. Yes, sir.
>
> Q. *As General Counsel for the Railroad Company?*
>
> A. Yes, sir. (Rec., 4. Italics ours.)
>
> Q. Then the suggestion for the formation of a separate company emanated from you as *Counsel for the Railroad Company?*

A. That is my recollection.

Q. And you of course consulted with the *officers of the Railroad Company* in regard to it?

A. Yes, sir. (Rec., 7.) [Italics ours.]

In a very real sense, therefore, the Coal Company is the child of the Railroad Company. Not only was it organized at the instance and under the direction of officers of the Railroad Company, but from the beginning, and as must necessarily be inferred, by design, its management has been dominated by officers and directors of the Railroad Company.

V.

Under the plan of organization of the Coal Company which, as seen, was devised and carried out at the instance and under the direction of officers of the Railroad Company, only stockholders of the Railroad Company were permitted to subscribe to the stock of the Coal Company. Whilst there have been some changes in holdings since the formation of the Coal Company, the community of ownership has remained substantially intact. (*Supra*, pp. 13, 14.)

Thus, the controlling stockholders of the Railroad Company always have been the controlling stockholders of the Coal Company; and this, not as an accidental result of the normal operations of business, but *by design* of the Railroad Company. In principle and effect this is the same as if the stock of the Coal Company had been vested directly

in the Railroad Company itself. *United States* v. *Union Pacific R. R. Co.*, 226 U. S., 470. There the question was whether the distribution by the Union Pacific Company to its own stockholders of its holdings of the stock of the Southern Pacific Company would accomplish a separation of the two companies. This Court held not, saying (p. 475):

> The plan proposed in the present motion of distributing the stock among the shareholders of the Union Pacific Company or of selling it to such shareholders will in effect transfer the stock from the Oregon Short Line Company, which now holds it for the Union Pacific Company, to the stockholders of the latter company, who own and control that company. Upon the face of it, this would seem to be a proposition to perpetuate the domination and control of the Union Pacific Company over the Southern Pacific Company, because of the power given to the Union Pacific Company's stockholders to choose the directors of the Southern Pacific Company. The ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors.
> * * *

VI.

The capital of the Coal Company came directly out of the treasury of the Railroad Company, and it was subscribed on a form prepared by the General Counsel of the Railroad Company and Mr.

Stetson, whose employment, nominally as counsel for the Coal Company, was suggested at a meeting of the Executive Committee of the Railroad Company. (*Supra,* pp. 4, 5, 7.)

VII.

The contract of August 2, 1909, purporting to transfer to the Coal Company before transportation the coal mined and purchased by the Railroad Company, was entered into by the Coal Company perfunctorily, as a puppet of the Railroad Company and not as a free agent. It was drafted by the General Counsel of the Railroad Company and approved by the Board of Managers of the Railroad Company before the Coal Company was incorporated, and on the day after its incorporation, when only $12,550 of its capital stock had been subscribed, was accepted for the Coal Company without change by a Board of Directors composed of the President of the Railroad Company, the Vice-President of the Railroad Company, four sons of members of the Board of Managers of the Railroad, and one other person. (*Supra,* pp. 4, 5, 9, 10.)

The contract makes the Coal Company so completely the slave of the Railroad Company that it could have no independent existence even though it were not controlled by the stockholders of the Railroad Company and managed largely by officers and directors of the Railroad Company.

Thus, whilst the Coal Company is bound to purchase all coal mined and delivered by the Railroad Company, the latter is not bound to deliver to the Coal Company any particular quantity but only such amount as it sees fit to mine, or none, at its "absolute option" and "as its interests may determine," and is subject to "no liability whatsoever" for failure to supply the Coal Company. On the other hand, the Coal Company is prohibited from purchasing coal from anyone but the Railroad Company without its consent. (*Supra*, pp. 10, 11.)

Again, the Coal Company is bound to conduct its business so "as best to conserve the interests of and preserve the good will and markets of the coal mined by" the Railroad Company; and it is bound to fill the orders of all responsible former customers of the Railroad Company "even though as to some of such customers the sales may be unprofitable." (*Supra*, pp. 11, 12.)

Furthermore, the provision for reciprocally exclusive dealing unites the interests of the Railroad Company and the Coal Company throughout their entire business and repels any inference that the Railroad Company has become dissociated from the coal. Through this provision the Railroad Company in its rôle of coal producer is protected against any dealing by the Coal Company with competing producers. On the other hand, the Coal Company as a seller of coal is protected against any dealing by the Railroad Company with com-

peting sellers. Taken in connection with the direct interest which the Railroad Company has in the price at which the coal is sold, the necessary effect of this provision is to make the Railroad Company and the Coal Company virtually partners—each bound to support and defend the other and to oppose all competitors of their joint enterprise.

Finally, upon giving six months' notice, the Railroad Company can terminate the contract and lease, and upon doing so can take back "all coal then stored or in transit purchased from the Railroad Company by the Coal Company," and the storage plants, trestles, and other selling facilities leased by it to the Coal Company. (*Supra*, p. 12.) This constitutes a string by which the Railroad Company at any time may draw back the entire business of the Coal Company, including not only its supply of coal but also in large part its selling equipment, leaving it a mere shell.

The Coal Company is thus at the mercy of the Railroad Company; it exists by sufferance of the Railroad Company; its business can be destroyed by the Railroad Company, acting clearly within the provisions of the contract. The Railroad Company can deliver to the Coal Company either more or less coal than it can advantageously market, and in neither case has it any recourse. Indeed, the Railroad Company on the one hand could overwhelm the Coal Company with deliveries of coal or on the other could cut off its supply altogether. Nor is

the Coal Company free to select its markets or its customers. Regardless of its own interests, it must continue to sell in the markets in which the Railroad Company sold, and it must continue to sell to those to whom the Railroad Company sold, and this, "even though as to some of such customers the sales may be unprofitable." (*Supra*, pp. 11, 12.)

Such a contract stamps the whole transaction with insincerity and unreality. It makes it impossible to say with any basis of reason whatever that the Coal Company has any existence apart from the Railroad Company.

VIII.

It is not surprising under the circumstances related that even the officers of the Railroad Company, including its General Counsel, although evidently straining to do so, have been unable always to view and deal with the Coal Company as a corporation independent of the Railroad Company in any real sense.

As before stated, at the very start the Secretary and Treasurer of the Railroad Company, *acting as an officer of the Railroad Company,* received the subscriptions to the capital stock of the Coal Company, and the subscriptions were made upon a form prepared by the General Counsel of the Railroad Company and Mr. Stetson.

The value of the selling facilities leased by the Railroad Company to the Coal Company was ap-

praised off-hand without that deliberate investigation and calculation which would have obtained in dealings between really independent corporations. (Rec., 132, 133.)

On March 16, 1910, Mr. Loomis, President of the Coal Company and Vice President of the Railroad Company, in charge of its mining department, wrote a letter to the President of the Price-Pancoast Coal Company which is entirely inconsistent with the theory that mining is the separate affair of the Railroad Company and selling the separate affair of the Coal Company. (Rec., 339.) It does not appear in which of his two capacities Mr. Loomis wrote, and, apparently, the line of separation was not clear even to him, for he says:

> If we had a place to put our coal we might be willing to take more in March, even if we did lose it by the drop in price, if we had storage facilities, but under present conditions, about the only thing left for us to do is to *restrict mining, or go out and sell coal* in March at April prices, which I think would be a mistake for the reason stated above. (Rec., 339.) [Italics ours.]

Again, on July 30, 1911, the Line Sales Agent of the Coal Company at Newark, N. J., wrote to the Assistant General Freight Agent of the Railroad Company as follows:

> We have not attempted to do any business at Perry or other points on the Silver Lake R. R. for some two (2) or three (3)

> years. It is mostly a chestnut market, and we are not very keen about going in there for business, and unless the B. R. & P. care to stand the entire shrinkage, as you suggest, you need not reduce the rate to $2.00 per ton, unless you think with Mr. Davis whose point is well taken, that rates higher than $2.00 and $1.75 for prepared and smaller respectively should not obtain at a point nearer the mines than Buffalo. (Rec., 340.)

Thus, apparently, a freight rate of the Railroad Company on coal was to be reduced or not as the interests of the Coal Company might dictate.

Again, on December 30, 1911, the same Line Sales Agent of the Coal Company wrote to Mr. Loomis as President of the Coal Company, stating that the Coal Company was losing money on certain sizes of coal in certain territory, and concluding as follows:

> Whether this be a matter of price or rate adjustment, it should be attended to at once.
>
> We can not shove the coal to Tide, for the industries have been fostered on the D., L. & W. line and must be taken care of. (Rec., 343.)

Thus, the theoretically independent Coal Company feels bound to continue to sell in an unprofitable territory in order to discharge the ethical obligation of the Railroad Company to industries on its lines.

Again, on March 2, 1911, Mr. Loomis, as Vice President of the Railroad Company, wrote to the

Assistant General Freight Agent of the Railroad Company in part as follows:

> * * * We can see no objection, whatever, to giving the Lackawanna and Wyoming Valley Railroad Company our zone rates of 30c, 45c, and 60c, respectively, for the first, second and third zones, as per our regular tariff. In fact, we would like to encourage such shipments to the industries located on D. L. & W. tracks, as in a measure it tends to relieve the D. L. & W. Coal Company, who prefer to send their shipments out along the line. (Rec., 345.)

The Railroad Company is thus seen extending rate privileges to outsiders, in order to relieve the Coal Company from supplying near-by industries, so that it may send its shipments "out along the line" of the Railroad Company, and thereby increase the latter's earnings.

Again, the Railroad Company continued to give to employees of the Coal Company just as if they were employees of the Railroad Company passes for free transportation within the State of New Jersey until about the time that State prohibited passes as the Federal Government had already done in respect of interstate transportation. (Rec., 47.)

IX.

This, therefore, is not the case of a railroad company and a coal company united *only* through the common ownership of their shares; and for that

reason *United States* v. *Delaware & Hudson Co. et al.*, 213 U. S., 366, 404, 413, is not in point, even accepting defendants' interpretation of the opinion.

Here, to review briefly, the Coal Company was organized at the direct instance of the Railroad Company; only stockholders of the Railroad Company were permitted to subscribe to the stock of the Coal Company; the capital of the Coal Company came directly out of the treasury of the Railroad Company; officers and directors of the Railroad Company and persons under their influence were installed as officers and directors of the Coal Company, and in consequence the business of the Coal Company at all times has been under the domination of the Railroad Company; finally, the Railroad Company imposed upon the Coal Company a contract which of itself destroyed the free agency of the Coal Company and made it merely an arm of the Railroad Company.

In short, in this case the common ownership arose not accidentally in the normal course of business, but *by design* of the Railroad Company, and has been exerted so as to give the Railroad Company control over the Coal Company and its product. Indeed, the Railroad Company not only has control over the product of the Coal Company, but actually exercises such control to the extent of prescribing the markets in which the coal shall be sold and the class of customers to whom it shall be sold, and the Coal Company is required to sell to the prescribed

class " even though as to some of such customers the sales may be unprofitable." Further, so intent is the Railroad Company that no part of the coal mined or purchased by it and ostensibly sold to the Coal Company shall at any time escape from its control that it required the Coal Company to agree to sell back to it or its nominee any of such coal on hand or in transit if the contract between the two companies should ever be terminated. (*Supra*, pp. 11, 12.)

In *United States* v. *Lehigh Valley Railroad Co.*, 220 U. S., 257, the second case under the Commodities Clause and a sequel to the first, this Court, reversing the District Court, pointed out its error as follows (p. 273):

> The error, however, lies in disregarding the fact that the allegations of the amended bill asserted the existence of a control by the Railroad Company over the coal corporation and its product, rendered possible, it is true, by the ownership of stock, but which was not the necessary result of a *bona fide* exercise of such ownership and which could only have arisen through the use by the Railroad Company of its stock ownership for the purpose of giving it, the Railroad Company, as a corporation for its own corporate purposes, complete power over the affairs of the Coal Company, just as if the Coal Company were a mere department of the railroad.

That is precisely the error in the present case. The District Court disregarded the fact that the

common ownership has been exercised here so as to give the Railroad Company "complete power over the affairs of the Coal Company, just as if the Coal Company were a mere department of the railroad."

X.

It was asserted below by counsel for defendants that the present position of the Government is inconsistent with what was said in the report of the Attorney General for 1912 in respect of an alleged similar arrangement adopted by the Lehigh Valley Railroad Company. The passage in question is as follows:

> By this arrangement both the railroad company [Lehigh Valley] and the coal companies seem to have parted in good faith with title to the coal before transportation begins and it is claimed therefore that transportation is free from the prohibition of the Commodities Clause as construed by the Supreme Court in 213 U. S., 412.
>
> The question will be submitted to the Court at an early day. (Pp. 23, 24.)

This was obviously intended as a statement of what was *claimed by the proponents of the arrangement* to be its effect, and so far from being an acceptance of the claim, definite notice is given that "the question will be submitted to the Court at an early day." In due course that was done and the case is now pending. Before instituting it, and for the purpose of clearing the way, the Attorney Gen-

eral procured to be dismissed without prejudice a suit theretofore instituted against the Lehigh Valley Railroad Company based on the old arrangement which had been superseded.

Second Point.

THE CONTRACT OF AUGUST 2, 1909, BETWEEN THE RAILROAD COMPANY AND THE COAL COMPANY RESTRAINS INTERSTATE TRADE AND COMMERCE IN VIOLATION OF THE FEDERAL ANTI-TRUST ACT.

I.

The Railroad Company agrees to sell to the Coal Company all coal mined and purchased by it except what it may use in its business as a common carrier. The Coal Company is bound to accept whatever quantity of coal the Railroad Company may see fit to mine or purchase and deliver. The Railroad Company is not bound to mine or purchase and deliver any and is under no liability whatsoever for failure to supply the Coal Company. On the other hand, the Coal Company can not buy from anyone else except the Railroad Company without its consent (*supra,* p. 11).

The Coal Company thus can sell only such amount of coal as the Railroad Company permits it to sell. It is within the power of the Railroad Company to cut off its supply entirely and prevent it from selling any. It is likewise within the power of the Railroad Company to force upon it more than it can sell, and thereby bring disaster upon it (*supra,* pp. 10, 11).

Nor, again, is the Coal Company free to select its markets or its customers (*supra*, pp. 11, 12).

It is impossible to conceive of a contract which would more completely destroy the free agency of a trader. It clearly belongs, therefore, to the class of contracts described by this Court in the *Standard Oil Company's Case* as "in restraint of trade in the subjective sense"—that is, contracts by which one "voluntarily and unreasonably restrains his right to carry on his trade or business." (221 U. S., 1, 56, 59.) Likewise it falls within Mr. Justice Holmes's strict definition of contracts in restraint of trade:

> They are contracts with a stranger to the contractor's business (although in some cases carrying on a similar one) which wholly or partially restrict the freedom of the contractor in carrying on that business as otherwise he would. (*Northern Securities Co.* v. *United States*, 193 U. S., 197, 404.)

If it be said that these provisions in effect are the usual provisions of exclusive sales agency contracts, the position of the Railroad Company would not be improved, for if the Coal Company be only the exclusive sales agent of the Railroad Company, it follows that the latter is transporting coal in which it has an interest, in violation of the Commodities Clause.

II.

This contract is in restraint of trade on another ground. It necessarily hinders and prevents the Railroad Company from freely fixing its rates for transporting coal according to recognized and legitimate standards, and introduces a factor which may not be considered consistently with the rights of the public, and which necessarily tends to keep such rates unduly high, for, since, under the contract, the Railroad Company receives for its coal at the mines a percentage of the price at New York Harbor, which price is largely determined by the freight rate, it follows that the higher the freight rate from the mines to New York Harbor the higher the prices received by the Railroad Company at the mines; and, on the other hand, as the freight rate decreases such prices decrease. The contract is thus not only a barrier against any reduction in the Railroad Company's freight rates to New York Harbor, however justified by conditions, but is an inducement to higher rates, regardless of any change in the cost or character of the services. In other words, this provision tends to interfere with the faithful performance by the Railroad Company of its duty as a public carrier to fix its rates with reference to transportation factors only by introducing a foreign element, namely, the fact that high freight rates will increase its profits as a *dealer* in coal.

To illustrate, the Railroad Company transfers to the Coal Company from 6,000,000 to 8,000,000 tons of coal a year (Rec., 393). Taking the average, 7,000,000 tons, and eliminating (merely for the purpose of simplicity) all but the prepared sizes, which constitute about 60 per cent of the whole, we have left approximately 4,200,000 tons. A general reduction of 50 cents a ton in the freight rates from the mines to New York Harbor, causing a corresponding reduction in the price of coal, would diminish the price received by the Railroad Company from the Coal Company by 65 per cent of 50 cents—32.5 cents a ton—not only upon coal which went to New York but also upon *all* prepared sizes wherever destined. A decline of 32.5 cents a ton on 4,200,000 tons of prepared sizes alone would reduce the Railroad Company's income as a *producer* of coal by $1,365,000, ignoring altogether the loss on the remaining 2,800,000 tons of smaller sizes.

If one railroad may dissociate itself from coal which it has mined by selling it on the 65 per cent basis, the others may do likewise, as the Lehigh Valley is already doing (Rec., 410), thus giving to all the anthracite railroads entering New York a collective interest as producers in keeping their freight rates to that market as high as possible.

It is true that the desire for profit is at all times an inducement, and a legitimate inducement, to a railroad company to increase its rates or maintain them at a high figure. But the law, in recognizing

this desire, insists that the proposed profit shall be one flowing from the legitimate business of transportation, and the desire shall be constrained and guarded against excess by the natural laws of supply and demand, and the influence of free competition. When to the prospective profit from transportation there is added a profit from another and foreign source to be indirectly derived by advancing rates, the resulting stimulus is wholly artificial and abnormal and is a constant temptation to extortion. Thus the free flow of commerce is burdened and impeded.

III.

The petition referred to the control acquired by the Railroad Company over the production and sale of coal from mines along its lines and to the transfer of such control, as regards sales, to the Coal Company. It did not, however, tender any issue under the Anti-Trust Act on those points and the Court below made no decision in respect of them. The petition did charge that the purchase of coal by the Railroad Company for resale, in other words, the dealing in coal by the Railroad Company, was unlawful, and asked that it be enjoined. The Court below made no decision on that point either. The Government does not now ask this Court to pass upon any of these questions. If, however, the decree of the lower Court is not reversed, the Government asks that in respect of these questions the bill be dismissed without prejudice

in order that it may be perfectly clear that they have not been foreclosed.

CONCLUSION.

The decree of the District Court should be reversed with directions that there be entered a decree (1) adjudging in substance that the arrangements adopted by the Railroad Company and challenged by the petition, pretending to dissociate the Railroad Company before transportation from anthracite coal mined and purchased by it and to divest it of all interest therein direct or indirect, do not accomplish that end, and, in consequence, that the Railroad Company in transporting in interstate commerce anthracite coal so mined and purchased by it is violating the Commodities Clause; (2) enjoining the Railroad Company from continuing such unlawful transportation; and (3) adjudging that the contract of August 2, 1909, between the Railroad Company and the Coal Company unlawfully restrains interstate trade and commerce, and enjoining its further performance by either party.

JOHN W. DAVIS,
Solicitor General.

G. CARROLL TODD,
Assistant to the Attorney General.

NOVEMBER, 1914.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES OF AMERICA, Appellant, v. THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY and THE DELAWARE, LACKAWANNA AND WESTERN COAL COMPANY.	No. 517.

BRIEF FOR APPELLEES.

This is an appeal by the United States from a decree of the District Court of New Jersey dismissing the Government's petition. The suit was heard under the Expediting Act before Judges Gray, Buffington and McPherson.

Judge McPherson wrote the opinion (pp. 400-428), the other Judges concurring therein.

The petition was filed in February, 1913, and separate answers were filed by the two appellees. Under an agreement and stipulation of counsel, an Examiner was appointed to take testimony and the suit was determined by the Court below upon the pleadings and proofs, consisting of the testimony and exhibits taken before the Examiner.

NOTE. Except where otherwise stated italics are ours.

The Issues Raised by the Pleadings.

It is alleged in the petition and *admitted* in the answers that the Coal Company is a corporation organized under the laws of the State of New Jersey, with a capital stock of $6,590,700; that since August 2nd, 1909, it has been engaged in dealing in anthracite coal at various places in the States of New Jersey, Pennsylvania and New York, and has agents and offices in other States wherein it carries on business. That the Railroad Company is a corporation organized under the laws of the State of Pennsylvania, with offices at Scranton and New York City, and is authorized by its franchises to carry on the business of a common carrier, to own and operate coal mines in Pennsylvania, and to buy and sell coal; that it has owned, leased and operated as one system various lines of railroads in the States of New York, New Jersey and Pennsylvania, and for more than thirty years last past has been engaged as a common carrier in the carriage of passengers and freight, including anthracite coal, in interstate and foreign commerce. That it has acquired at various times by purchase and lease, and now holds, fifteen thousand acres of land containing anthracite coal in Lackawanna and Luzerne Counties, Pennsylvania, upon which lands it now operates many collieries where it prepares coal mined from such lands for sale; that great quantities of the coal so mined and prepared have been loaded upon its cars and carried by it in interstate and foreign commerce. That because of the inhibitions of the so-called Commodities Clause of the Hepburn Act, it became unlawful for the Railroad Company to transport such coal in interstate commerce. That in July, 1909, the Rail-

road Company declared a cash dividend of fifty per cent. and its stockholders were invited to subscribe for stock of the Coal Company on the basis of one share of the latter for each four shares of the stock of the Railroad Company held by them. That most of the stockholders of the Railroad Company in response to such invitation subscribed for stock in the Coal Company, and the Coal Company upon its formation entered into a contract with the Railroad Company, a copy of which is annexed to the petition, whereby the Railroad Company sold to the Coal Company all of its coal stored and in transit and agreed to sell all of the coal subsequently mined or purchased by it f. o. b. cars at the breakers, at prices and upon the terms named in such contract, and that the provisions of such contract have been conformed to by the appellees since such date (pp. 347-396).

It is further alleged in the petition and *denied* in the answers of the appellees that the purpose of the organization of the Coal Company and of such contract was to secure to those who dominated and controlled the affairs of the Railroad Company.

> "the continued unity of mining, transporting and selling, in substance as theretofore, and depriving the public of the benefit which the aforesaid act (Commodities Clause) was intended to produce. * * * That by reason of the arrangements described, the support of the Railroad Company, and the peculiar advantages and facilities acquired, the Coal Company at once secured and has ever since maintained an unlawful monopoly of the sale of coal produced along defendant's railroad, and has completely dominated the markets at all points thereon not reached by any other

railroad. Its position, power and support render effective competition with it practically impossible, and the monopoly which it now holds will continue indefinitely unless restrained" (pp. 354-360).

The other material allegations of the petition *denied* by the answers, which we quote, to enable the Court to understand the contentions of the appellant, are the following:

"The purpose of the Railroad Company and those who controlled it in organizing the defendant Coal Company was to use the latter as a mere instrumentality for retaining under their direction and for their profit the business of selling coal theretofore carried on by the railroad; and under the agreement of August 2, 1909—Exhibit A hereto—this purpose has been carried into fruition. The Coal Company is and must always be subservient to the will and direction of the railroad and those who control the latter. They have always constituted its dominant stockholders and probably always will. They elect its officers, determine its policies, and, moreover, they may take away its sole business upon six months' notice. If its conduct should fail to meet their approval, it may be deprived of all benefits under the sales contract—Exhibit A—and its business quickly destroyed. In such event a similar subterfuge could be organized and the profits of the entire business still be secured to the stockholders of the railroad.

"The arrangement under which the defendant companies are operating in no proper or legal sense destroys or terminates the interest which the Railroad Company has in the output of the mines which it owns and operates, or in the coal which it purchases from others before the same starts in the

course of interstate or foreign transportation; but during the entire time and course of such transportation the carrier has an interest therein within the true meaning and intent of the statute. The two companies are but the instrumentalities of the same group of stockholders; the arrangements and contracts between them are but devices to avoid the prohibitions of the Interstate Commerce Act, and operations under them are more damaging to the public than those under the old plan prior to August, 1909. They have enabled the Coal Company to acquire a monopoly of the sales of coal produced along the defendant railroad, and through the exclusive use of the instrumentalities leased by the latter and otherwise, this monopoly will be continued. Having in the ways described secured for itself a monopoly, the defendant railroad successfully undertook to transfer this to the Coal Company, and, unless prevented, such monopoly will continue to the great detriment of the public" (pp. 361-362).

The petition contains many allegations of fact denied by the answers with respect to which no proof was introduced. The petition also sets forth numerous conclusions of fact which the appellant asked the Court to find from certain other facts. These we need not take up *seriatim* in this statement.

The Government in the Court below made three points as follows:

Point I. The relations between the Railroad Company and the Coal Company are such that the transportation in interstate commerce by the Railroad Company of coal purporting to have been sold at the mines by the Railroad Company to the Coal Company is a violation of the Commodities Clause.

Point II. The Railroad Company retains an interest in the coal during the time of transportation by reason of the 65% provisions of the contract.

Point III. The contract between the Railroad Company and the Coal Company constitutes an illegal combination in restraint of trade and in furtherance of monopoly.

The Court below dismissed the bill.

The Government, here, again urges the first point, and raises an additional point not presented to the Court below, viz.: that the contract in issue restrains commerce because, firstly, it is exclusive and, secondly, is a barrier against the reduction of rates by the Railroad Company. That, because of the alleged exclusiveness of the contract, the same is illegal, is not alleged in the petition and is first suggested in the Government's brief here.

As the Government here asks that the bill be dismissed without prejudice as to the monopoly charge we direct the attention of the Court to the fact that such charge is mainly relied upon in the petition and most of the Government's proof was directed thereto.

The facts, however, absolutely disproved the existence of any such monopoly.

Proof With Respect to the Question of Monopoly.

The Delaware, Lackawanna and Western Railroad Company has been engaged for more than sixty years in the mining of coal from lands owned or leased by it, having express charter rights from

the Legislature of Pennsylvania to own coal mines and mine coal therefrom (pp. 2, 8, 10). Its production of coal from its mines has increased in volume continuously from fifty-nine thousand tons in the year 1852 to upwards of seven million tons in the year 1912 (p. 10). It has also purchased coal from others largely under the form of contract known as the sixty-five per cent. contract. The volume of the coal so purchased in recent years, is as follows: 1908, 1,994,000 tons; 1909, 1,836,000 tons; 1910, 1,658,000 tons; 1911, 1,579,000 tons (p. 3). The amount so purchased has decreased in volume from year to year until, for the year ending October 31st, 1913, the Railroad Company purchased the amount of 503,210 tons only (p. 113). *All of such coal so purchased by the Railroad Company was, in fact, its own coal mined by others under a mining contract, and charged back under sixty-five per cent. contracts* (p. 3). These contracts were excepted from the decree of this Court in the Reading case (226 U. S., 324) by the District Court under the authority of the opinion of this Court (228 U. S., 158). While the Railroad Company, after the formation of the Coal Company, continued to purchase some outside coal for reasons stated at page fourteen of the testimony, that practice has been entirely discontinued. The purchases of outside coal by the Coal Company have been inconsiderable in amount since its organization in August, 1909, as follows: 1909, 3,847 tons; 1910, 2,267 tons; 1911, 6,600 tons, 1912, 9,204 tons; 1913 to October 30th, 310,645 tons (p. 4). In the year 1911, there were produced from all the collieries located upon the line of all appellees railroad a total of 14,649,763.19 tons of anthracite coal, of which upwards of 8,300,000 tons were pro-

duced which the Railroad Company from its own mines. A portion of the coal so produced was appropriated by the operators for their own purposes, and of the upwards of 12,000,000 tons of commercial coal, 68.38 per cent. was sold to the Coal Company and 31.62 per cent. sold to others (p. 49). Of the total coal produced along the line of the Railroad by others than the Railroad Company itself, amounting to 6,335,887 tons, there was sold to the Railroad and Coal Companies jointly a total of but 1,577,234 tons, less than 25 per cent. (pp. 49, 98). The total coal produced by all anthracite producers in the year 1911 was 69,955,000 tons, of which total the shipments of the Coal Company were twelve per cent. only (p. 83). Of the total anthracite coal carried by the Railroad Company, but a small proportion was coal other than that produced by the Railroad Company from its own lands, together with its own coal mined for it by the Kingston Coal Company. The statement, printed at page 51 of the record and explained at page 111, shows that an insignificant proportion of the anthracite coal carried by the Railroad Company was the coal mined by others than itself. Of the coal produced at so-called independent operations, located on the line of the Railroad and served by two or more railroads, it appeared that an insignificant proportion was carried over the lines of the appellee Railroad Company. For example, for the year 1910, 3,371,245 tons were so produced, while during that year the total tonnage of all private shippers over the lines of the Railroad Company was but 410,000 tons (p. 113).

It appears from the record that all of the so-called independent coal producers may, without

difficulty, obtain track connection with more than one of the so-called anthracite carriers (pp. 56, 86), and the anthracite territory reached by the lines of the appellee Railroad Company is also reached by the following other companies: the Lehigh Valley, the Ontario and Western, the Erie, the Delaware and Hudson, the Pennsylvania, and the Central Railroad of New Jersey (pp. 56, 85). The condition of the independent producers is thus described in the testimony, page 57: "If they want "to sell their coal to the railroad on the basis of "the 65 per cent. contract they can sell it to the "Railroad Company on that basis at any time, no "matter what the conditions of the market are, "and if they think that the coal is worth more "than that, they don't sell it to us, so that they "always have a purchaser for the coal on the basis "of the 65 per cent. contract, which is a very favor-"able sale of coal, a sale which we were perfectly "willing to make of our coal to the Coal Company. "If they can get a better price than that they don't "sell it on that basis, whereas the Coal Company "always pays on that basis for its coal." Whether or not the coal of the so-called independent producer was sold to the Railroad Company or not in the past, also depended upon various conditions which were explained at pages 4, and 49 of the testimony.

The Delaware, Lackawanna and Western Coal Company is treated by the Railroad Company, of course, under the provisions of the Interstate Commerce Act, the same as all other shippers, pays the same rates for the transportation of its coal, the same demurrage charges, and is given the same treatment (pp. 52, 56, 57). It disposes of but twelve per cent. of the entire pro-

duction of anthracite coal and such coal is sold by it in competition with the eighty-eight per cent. of coal sold by other companies. Moreover, about forty per cent. of its coal is of steam or small sizes, which is sold in active competition with bituminous coal. It appears that such coal is sold at widely distributed points, in the volumes shown at pages 101, 103 of the record. The same competitive conditions as exist with respect to the number of railroads serving the anthracite producers of coal, exist with respect to the railroads serving the markets at which anthracite coal is sold. For example, the entire territory in which anthracite coal is sold, reached by the lines owned and operated by the Railroad Company, is also reached by the lines of various other railroad companies, with the exception of four limited and sparsely settled sections, which are located solely on its lines. These points might be called non-competitive points from a railroad standpoint, because they are not reached by any other railroad than the Lackawanna, but any other coal company could sell its coal at such points on the same basis as the Coal Company by paying the same rate of transportation over the Railroad as the Coal Company must pay. They are, therefore, competitive points from the standpoint of the Coal Company in selling its coal (p. 115). A statement of such points, together with the volume of coal sold thereat, will be found at page 116 of the record. This statement shows a total of, approximately, 58,000 tons sold at all such points, being but seven-tenths of one per cent. of the total sales of coal by the Coal Company (pp. 81, 82). It also appears that the prices of coal sold at these points differ in no respect from the price of

coal sold at points served by two or more railroads, except as the freight rate to such points varies (p. 117). With respect to the sale of coal at all other points located along the line of the Railroad, it appears, without contradiction, that the same are competitive not only from a sales standpoint, but from a railroad standpoint, in that coal may be shipped to such points over various railroads.

Notwithstanding the foregoing, an effort was made by the appellant to show the existence of a monopoly, because the Railroad Company in the past, in order to market its coal, had constructed various storage, trestle and other facilities which had been leased to the Coal Company under the terms of the contract of August 2nd, 1909.

As to the storage plants, the following facts appear: It was important, if not necessary, that the coal mines be operated continuously during the year. As during certain seasons of the year anthracite coal cannot be sold, it is necessary that the same be stored until there be a demand therefor. Storage plants had been constructed by the Railroad Company for such purpose at Cheektowaga, New York, at Port Morris and Dover, New Jersey. After the formation of the Coal Company, these plants were leased by the Railroad Company to the Coal Company, and have since been operated by it (pp. 52, 53). The Coal Company pays the Railroad Company for the use of such storage facilities a rental of five per cent. upon the value of such storage plants and pays the entire cost of the operation thereof, including the expense of maintenance (p. 82). It appeared from exhibits introduced at pages 236, 239, of the record, that in addition to the rental paid

therefor, the cost of maintenance and operation of such trestles to the Coal Company, involved an expense at the Cheektowaga trestle of 41 cents per ton, at the Dover trestle of 32 cents per ton, and at the Port Morris trestle of 54 cents per ton. In addition the Coal Company was obligated to pay demurrage charges at such points if the coal was not promptly loaded and unloaded from cars (p. 54). It appears that there is no reason why any independent producer of coal could not acquire storage plants similar to those used by the Coal Company if he desired so to do (pp. 55, 82). Taking over the storage plants by the Coal Company was shown to be a commercial disadvantage to it as against its competitors (pp. 54, 55, 84).

The Railroad Company in addition to the construction of storage facilities, had also constructed various other facilities at terminal points along its line, such as coal trestles, transfer trestles and the like. Its transfer trestles were located at terminal points, and upon the formation of the Coal Company were not leased to it but were retained for the general use of all anthracite shippers. As the Railroad Company, however, was required to discontinue altogether the sale of coal, it became necessary for it to lease such of its trestle facilities located along its line as were owned by it, to the Coal Company, and to transfer to the Coal Company its leases of like facilities to others. A lease was accordingly executed, pursuant to the terms of the contract of August 2nd, 1909, of all of such facilities, and is printed at page 240 *et seq.* of the record. The facilities owned by the Railroad Company will be seen to be limited, and including the storage plants are detailed in Schedule "A" at

page 248. All of the facilities so leased to others, consisting largely of land owned by the Railroad Company upon which such others had erected trestles which were owned and operated by themselves, are set forth in Schedule "B" at pages 248-254. The purpose of a trestle is described at page 78 of the testimony. The total number of trestles located along the line of the railroads owned and operated by the Railroad Company, is 282, of which number 246 are owned by so-called independent dealers (in other words, by dealers other than the Railroad Company formerly, and Coal Company today), and 36 leased to or owned by the Coal Company, the percentage being 12.76 by the Coal Company and 87.24 by independent dealers (p. 119). With respect to the capacity of such trestles, those of the Coal Company have a comparative capacity of 15.2 per cent., and those of others 84.8 (p. 127). While all these trestles have track connection with the Railroad, the percentage named are operated by dealers engaged in the sale of coal who are free to buy coal, and do in fact buy coal, from whomsoever they desire (p. 83). The Railroad Company could not in the past keep out independent dealers at any point, nor can the Coal Company do so today (p. 83). The Railroad Company is required to furnish track connections for any such facility, so that it is simply a question of whether a dealer has trade enough or money enough, to provide himself with a trestle (p. 83). The trestles formerly owned by the Railroad Company and leased by it to the Coal Company under Schedule "A," are operated as wholesale trestles, where any local dealer can purchase coal by the wagon load without discrimination, and all other trestles are in-

dependent trestles as described (pp. 78, 83, 121, 124).

It therefore appears from the foregoing that with respect to the sale of coal along appellee's lines of railroad, far from there being a monopoly, the conditions are altogether competitive.

All of the coal mined by the Railroad Company is sold to the Coal Company under the terms of the contract of August 2nd, 1909, at the breakers, and title passes to the Coal Company upon the coal being loaded into cars at such points (pp. 57, 106, 108). After being so loaded the coal is moved by the Railroad Company as a carrier, for the Coal Company as a shipper, strictly in accordance with the orders of the shipper (p. 58). The prices at which coal is sold are not uniform (p. 59). While the Coal Company does not seek to take advantage of unusual labor or other conditions decreasing temporarily the supply of coal, the testimony shows that the so-called independent producers immediately take advantage of such conditions to demand exorbitant prices for their coal, and on all occasions when there is an unusual demand for coal, obtain higher prices than are charged by the Coal Company, such excess prices running as high as two dollars and two dollars and fifty cents per ton (pp. 55, 117, 118).

The Organization of the Coal Company.

Prior to the organization of the Coal Company and before the time of the present management of the Railroad Company, it sold most of its coal to the firm of Holden & Sons, and such firm marketed the coal (p. 15). Subsequently, in

order to economically and efficiently conduct its coal business, the Railroad Company organized its coal sales department, which was conducted as a part of its coal department (p. 15). All of the coal mined by the company was sold through this sales department by employees working on a salary basis or through agents who sold the coal on salary or commission (p. 15).

After the decision by this Court of the Commodities Case, the management of the Railroad Company was confronted with the problem of how to dispose of its coal at the mines, before transportation of the same by it, in a way which would be in full compliance with the letter and spirit of the opinion of this Court, and which would at the same time insure a profitable return to the company for its coal. It was then producing upwards of 7,000,000 tons of coal yearly and its output was expected to increase as in the past. It had built up a large market for its coal in Canada and the West, and it was essential to economically market the coal at distant points that the coal should be moved in large volume. Some 2,000,000 tons of its coal had been so moved yearly in boat loads over the Great Lakes during the season of navigation. It was wholly impractical to attempt to dispose of its coal to existing dealers at the mines or elsewhere (fol. 42). The coal must all have been sold to one corporation with a capital and an organization capable of taking the entire output at all times and of efficiently and economically marketing the same. It was, moreover, necessary that immediate action be taken in order to conform to the decree of the Court shortly to be entered. The management of the company, accordingly, under the ad-

vice of counsel, arranged for the organization of the Coal Company in the hope and expectation that its stockholders would subscribe for stock therein, and that such company by taking over the sales organization of the Railroad Company would be able to market all of its coal economically and efficiently. The testimony with respect to the organization of the Coal Company will be found in the record at pages 4-16, 23-28, 33-37, 46-51, 64-69. The Railroad Company, having at the time accumulated a surplus, declared a fifty per cent. (50%) cash dividend which was distributed to its stockholders. Counsel were employed in behalf of the Coal Company to be organized to arrange for its incorporation. Counsel representing the two companies drafted the form of contract which was subsequently entered into. A circular prepared by counsel was sent, through the Treasurer of the Railroad Company, to all of its stockholders, inviting them to subscribe for stock in the Coal Company to be organized, at par. The capital stock of the Coal Company was fixed at an amount which would enable it to have adequate funds to pay cash for the purchase of the Railroad Company's coal. Upon the organization of the Coal Company, Directors were selected from interests and families known to the stockholders and whom they would be likely to approve, in order that they might generally endorse the plan and subscribe for stock of the company. As a result all stockholders of the Railroad Company, with the exception of those named at pages 12 and 13 of the record, representing 2,249 shares of stock, subscribed for Coal Company stock and paid their subscriptions in cash, so that the Coal Company by August 1st, 1909, had a paid up capital

stock in excess of $6,500,000. Both companies, accordingly, agreed to the contract so drafted and it became operative on August 2nd, 1909.

The Railroad Company did not acquire a single share of stock of the Coal Company.

Prior to the taking effect of the contract, the Railroad Company discontinued entirely its sales department and withdrew absolutely from the marketing of its coal. Most of the employees formerly employed by the Railroad Company in its sales department were employed by the new Coal Company, although their positions and responsibilities were, in many instances, quite different than theretofore. Mr. D. E. Russell, who had been in the employ of the Railroad Company as a sales agent, became Vice-President and General Sales Agent of the Coal Company, in direct charge of the entire sales end of its business.

The contract between the two corporations provided that the Coal Company should purchase of the Railroad Company all of its coal in transit of the agreed value of upwards of $2,500,000, should lease from the Railroad Company all of its coal selling facilities on a rental basis of five per cent. of the value thereof; should take over all of its leases to coal dealers, and should agree to purchase all of the coal thereafter mined or purchased by it, on a sixty-five per cent. basis, paying therefor in cash by the twentieth day of each month, and paying all accrued freight charges for the transportation thereof on the fifteenth of each month (pp. 364-372). The Court will appreciate that no contract could have been drawn naming any fixed future price per ton which the Coal Company should pay the Railroad Company for its coal. The sixty-five per cent. basis was adopted

for the reasons explained at page 36 of the record. Whether such basis would be a fair price from the standpoint of both companies was wholly problematical and various provisions were inserted in the contract, as explained on page 36 of the record, to protect the interests of both companies in this regard.

With respect to the title of the coal in transit, the contract provides:

> "Whereas, it has become necessary for the seller (the Railroad Company) in compliance with law, to sell all of its coal within the State of Pennsylvania, and the buyer (the Coal Company) is desirous of contracting to so purchase all of the seller's coal at its mines, to contract for the transportation of the same, to market and to sell the same * * *. It is agreed that the seller shall sell to the buyer all coal hereafter mined by it from coal lands owned or leased by it, together with all coal it may purchase. The buyer agrees to purchase all such coal at such prices and to pay the seller therefor in cash on the twentieth of each month for all coal delivered to it by the seller, f. o. b. cars at the mines during the preceding month * * * The buyer agrees to pay the seller and the seller agrees to accept from the buyer the following prices for said coal to be delivered f. o. b. railroad cars at the various breakers now located and hereafter constructed by the seller at its mines aforesaid."

Under the terms of such contract, and pursuant to the practice of the appellee companies, the title to the coal becomes vested in the Coal Company the minute the coal is loaded at the mine, whereupon it is billed by and moved, pursuant to the orders of the Coal Company, to such destinations as it selects (pp. 57, 58, 94, 106 and 108).

The Bona Fides of the Coal Company and the Question of Its Separate Management.

The Coal Company started business on August 2nd, 1909. A reference to the exhibit at page 103 shows the extent of its sales for the first three years, the gross proceeds from which were in excess of $38,000,000 yearly. In the year 1912 the Coal Company paid to the Railroad Company for coal purchased the sum of $19,861,904, and for freight charges the sum of $13,119,223, a total of some $33,000,000. The total so paid for the year 1911 was $35,000,000, and for 1910, thirty-four and a half million. In addition thereto the Coal Company in the year 1912 paid for freight charges of other roads the sum of $874,158; for boat freights, $529,106; handling charges to western agents, $696,143; selling charges to western agents, $435,253; handling charges to salaried agents, $61,650; selling charges to salaried agents, $98,399. It paid to others than the Railroad Company in the year 1912 upwards of $5,000,000, and in the years 1910 and 1911 upwards of $7,000,000 (p. 114). The Coal Company since its organization has not been confined to the wholesale sale of the coal of the Railroad Company. It has expended large sums of money in the acquisition of property on its own account, including large retail coal distributing facilities at Toronto, Canada, and Syracuse, New York. It has invested large sums in the acquisition of properties, land, buildings, trestles and other facilities for the sale of coal (pp. 29, 87). It has entered into various contracts with large fuel concerns in the Northwest for the sale of its coal for a term of years. Even if the contract in

question were abrogated, the Coal Company has acquired adequate facilities and has adequate capital to enable it to continue to do a profitable business, and its only difficulty would be to obtain by purchase a sufficient amount of coal to supply its customers, which the record shows it would probably be able to obtain (pp. 38, 39, 100, 102). The stock of the Coal Company has been largely dealt in by the public, and there have been constant changes in its list of stockholders and in the amount of their holdings (p. 39). The list of stockholders of the two companies changes constantly. One retains his stock in the Coal Company and sells his stock in the Railroad Company, and *vice versa* (p. 39). Although at the time of the formation of the Coal Company the stockholders of the two companies were identical, except for 2,249 shares of stock, the owners of which did not subscribe for stock in the Coal Company, a statement prepared under date of October 7th, 1913, shows that at such date there were 88,716 shares of stock of the Railroad Company, the owners of which owned no stock of the Coal Company, and 6,907 shares of stock of the Coal Company, the owners of which owned no stock of the Railroad Company (p. 40). In other words, some fifteen per cent. of the holders of stock of the Railroad Company in three years were not stockholders of the Coal Company. It would seem to be a fair inference that within ten years the control of the stock of the two companies will be in the hands of different persons. On October 10th, 1913, there were in all 1,588 stockholders in the Coal Company, of which 801 were women holding stock in their own right, or having stock held in trust for them (p. 42), a consider-

able number of whom acquired such stock after the organization of the Coal Company (pp. 230-232). Of the thirty-five controlling stockholders of the Railroad Company, but one, Mr. Blumenthal, a Director of the Coal Company, and he is not a Director of the Railroad Company (p. 44). Various differences have arisen with respect to the contract, and modifications of the same were being negoti ated between the two companies at the time of the trial (p. 76) and have since been concluded. As to the separation of the operations of the two companies, we quote from the testimony at pages 118, 119:

> "When the Coal Company was formed the business formerly conducted by the Delaware, Lackawanna and Western Railroad, of selling its coal in the market was taken over by the Delaware, Lackawanna and Western Coal Company, and from that time on the Delaware, Lackawanna and Western Railroad Company has had nothing whatever to do with the marketing of its coal. It sold all of its coal, except such as it appropriated for its own purposes or permitted its mining employees to use, to the Coal Company at the mines. It withdrew absolutely from the selling of coal. The Coal Company was formed with a separate organization from the top to the bottom. A separate Board of Directors, separate officers and separate books. It was just as distinct a corporation from the Railroad Company as that of any other shipper along the lines of the Delaware, Lackawanna and Western Railroad, with the exception of certain individuals who are employed jointly by the two companies, and with the exception of the relationship between the two companies in their Board of Directors and their stockholders. In their actual management, keep-

ing the books and accounts and what not, the corporations are just as separate and distinct as any two corporations could be. The Delaware, Lackawanna and Western Coal Company has its own office, it keeps its own books. When the Coal Company was formed it opened up an extensive set of books pertaining to the sales which were not formerly kept by the Delaware, Lackawanna and Western Railroad Company. The Delaware, Lackawanna and Western Coal Company deposits its funds separately in its own name in banks which it selects and all of its books pertain solely to its own business. Its earnings are figured from such books and the profits from the business are distributed by the Delaware, Lackawanna and Western Coal Company to its own stockholders, except the money which it retains and shows on its books as a surplus. The sales department of the Coal Company is now, with the exception of certain supervision by Mr. Loomis, President of the Coal Company, under the supervision of Mr. Russell, Vice-President and General Sales Agent, and all of the sales agents under Mr. Russell, wherever located, are today, and since the organization of the Coal Company have been, employed by and work exclusively for the Coal Company and have nothing whatever to do with the Railroad Company. All the bookkeeping force in the general office of the Coal Company work solely for the Coal Company, and are paid solely by the Coal Company. The minute book of the Board of Directors of the Coal Company I have offered to counsel for the Government, and they have examined the same and have introduced in evidence such portions as they desire to, and all of the books and accounts of the Coal Company I am entirely willing that counsel for the Government should look over in order to ascertain the complete separation of the business

of the Coal Company from that of the Railroad Company."

It moreover appears in the record, and will not be disputed by counsel for the Government, that prior to and during the progress of the present suit, the appellees have facilitated and assisted the Government in the obtaining of all facts desired pertaining to their organization and business. Prior to the institution of the suit counsel for appellees conferred with counsel for the Government, answering fully all questions which were asked in his investigation, and provided him with copies of all papers requested. The same course has been followed during the progress of the case, the appellees preparing for the Government exhibits and data in compliance with all requests of the Government's counsel, and tendering to such counsel all minutes of the Boards of Directors of the two companies, which have been fully examined, and all books of the two companies. Moreover (see p. 139), for a period of six months prior to the taking of testimony in this suit before the Master, many inspectors for the Interstate Commerce Commission were engaged in an examination of the books of both appellees to obtain data to be used before the Commission in its investigation of the practices and rates of anthracite carriers, and data so obtained was available to counsel for the Government in this suit, and a portion thereof used. Notwithstanding all the foregoing, no testimony of any name or nature was introduced in the record to indicate bad faith either in the organization of the Coal Company or in its management, or to substantiate any of the claims of the Government's petition with respect to a joint domination or con-

trol of the two companies in actual management, or anything to indicate that the affairs of the companies were carried on in unison, or that either unduly or improperly, or in any wise, controls or influences the action of the other with respect to any business matter.

POINT I.

The appellees do not maintain a monopoly in the production or sale of coal, as alleged in the petition

The testimony introduced by the Government, hereinbefore cited, disproves all such allegations.

POINT II.

The Railroad Company, by a sale of its coal under the terms of the contract in issue to the Coal Company, has in good faith dissociated itself from such coal before transportation.

Without restating the facts with respect to the organization of the Coal Company, or again referring to the terms of the contract in issue, the question to be determined by the Court is whether by a sale of its coal to the Coal Company so organized, under the terms of such contract, the Railroad Company has complied with the Commodities Clause as construed by this Court. There is here no question of what the purpose or intention was with respect to the organization of the Coal Company, but whether what was in fact done by the Railroad Company after such

decision, was in compliance with law. Whatever was done by it was done openly, publicly, pursuant to the advice of counsel, without any attempt at concealment or subterfuge. The Railroad Company was confronted with a situation which was equally clear to it as it was to the Department of Justice, and whatever it did would certainly be scrutinized by the Department of Justice, so that it would have been useless to have attempted to rearrange its affairs in conformance with the opinion of the Court by any method involving concealment or device to render it legal. The declaration of the fifty per cent. dividend by the Railroad Company was generally known; the charter of the Coal Company was filed as a public document, open to the inspection of everyone; the circular sent by the incorporators of the Coal Company through the Treasurer of the Railroad Company to its stockholders, was sent broadcast to all stockholders and published in the public press; the annual reports of the Railroad Company and the Coal Company disclosed every step which had been taken by the two companies; and the course pursued was pursued deliberately, in the belief that it was in full compliance not only with the letter but with the spirit of the opinion of this Court in construing the Commodities Clause. Nor, as has hereinbefore been recited, have either of the companies attempted to conceal any fact from the Government when it sought to present the question of the legality of what the Railroad Company did, for adjudication; nor was any effort made, either to delay such adjudication or to obstruct or hinder any knowledge by the Government of what had been done. It will not be claimed by counsel for the Government that the

Railroad Company has not in every way possible assisted the Government in acquainting it with all facts desired to enable it to obtain a speedy determination of the legal question involved.

The main contention of the Government upon this appeal, as expressed at page 2 of its brief, is as follows:

> "Whilst in form a new and independent suit, in effect it is a proceeding to enforce a prior decision of this Court declaring that the Railroad Company is prohibited by the Commodities Clause from transporting in interstate commerce anthracite coal mined and purchased by it in Pennsylvania, unless it shall have 'in good faith before the act of transportation dissociated itself from such article or commodity'" (United States *v.* Delaware & Hudson Co., 213 U. S., 366).

In other words, upon this appeal, the Government takes the position that the question for this Court to determine is whether the appellees have complied with the decision of this Court in the case cited.

The case was brought by the Government against six anthracite carriers, viz.: Delaware & Hudson, Erie, Central of New Jersey, Delaware, Lackawanna & Western, Pennsylvania and Lehigh Valley, Companies. This Court inserted in the margin of its opinion the answers of the defendants upon which the cases were determined, from which it appeared as to the Erie, the Central of New Jersey, the Pennylvania and the Lehigh Valley Companies, that they were the owners of all or a majority of the stock of subsidiary coal companies, all of the coal produced by which was customarily transported by such carriers over their respective lines in interstate commerce. As

to the Delaware & Hudson Company, we quote from the opinion at page 402:

> "That there are three coal companies whose shares are practically all owned by it. * * *
>
> "It is further averred, as a special ground of defense by the said Delaware & Hudson Company, that this said 'Commodities Clause' does not apply to it, *because all the coal mined by it upon its own lands, and upon the lands of the said three coal companies (except as to steam sizes, as thereafter stated), is sold, before transportation thereof begins, by said company to third persons at the mines in Pennsylvania from which such coal has been produced,* and that said company does not, at the time when the same is so transported by it in interstate commerce, own the same nor any interest therein, direct or indirect, apart from its obligation and rights as a common carrier in the transportation thereof, and that it carries said coal for the account of the purchaser thereof, who is the consignor and owner of said coal."

As to the Delaware, Lackawanna & Western Railroad Company, it was admitted that such company, directly, and not through the instrumentality of any coal company, owned the coal which it so transported. The cases were remanded to the Court below for such further proceedings as might be necessary to apply and enforce the statute as interpreted by this Court. Upon the filing of the mandate, the Court below vacated its decree dismissing the bills and reinstated the cases upon the docket.

As to the Erie, Pennsylvania and Central of New Jersey Companies, the Court below entered a decree dismissing the bill absolutely, and upon appeal by the Government the action of the

Court was affirmed (220 U. S., 275). A similar decree was entered in the case against the Lehigh Valley, which, upon appeal, was reversed by this Court (220 U. S., 257), in an opinion from which we hereinafter quote at length. The decree and the suit against the Delaware & Hudson Company provided as follows:

> "Whereas, it appears to the Court upon the pleadings that the defendant, The Delaware & Hudson Company, has not, since May 1, 1908, carried upon its railroad or otherwise through and over territory in the State of Pennsylvania, and from the said State into the States of New York, Vermont and other States, any anthracite coal owned by it at the time of such transportation and not necessary and intended for its use in the conduct of its business as a common carrier *other than the smaller sizes of such coal known as 'steam sizes;'*
>
> "Wherefore, it is ordered, adjudged and decreed that the defendant, The Delaware & Hudson Company, be and it is hereby enjoined and restrained from transporting from the State of Pennsylvania into the State of New York or into any other State, territory or the District of Columbia, or to any foreign country, any of the smaller sizes of anthracite coal known as steam sizes, mined or produced by it or under its authority and which it still owns in whole or in part at the time of transportation, or which at the time of transportation it may own in whole or in part, or in which it may have any interest, direct or indirect, within the meaning of the provisions of Section 1 of an Act of Congress entitled 'An Act to Regulate Commerce,'" etc.

This decree was acquiesced in by the Government and no appeal taken therefrom.

The decree entered against the Lackawanna Company, which, the Government says, this

"is a proceeding to enforce,"

provided that it

> "be, and it hereby is enjoined and restrained from transporting in interstate commerce from any State, territory or the District of Columbia to any other State, territory or the District of Columbia or to any foreign country, any coal which has been or may have been mined, manufactured or produced by it or under its authority, and which it may own in whole or in part at the time of transportation, or which it may own in whole or in part at the time of transportation although not mined, manufactured or produced by it, or in which it may have any interest at the time of transportation, direct or indirect, except such coal as may be necessary and intended for its use in the conduct of its business as a common carrier."

Except as to steam sizes of the Delaware & Hudson Company, of comparatively inconsequential consideration, the only company immediately affected by this litigation, as a practical matter, was this appellee, the Lackawanna Railroad, and for the sole reason that it directly owned the coal transported by it instead of owning the same through an intermediary and subsidiary company.

The special defense of the Delaware & Hudson Company had been sustained, viz.: that having sold its coal at the mines before transportation, it had dissociated itself therefrom and the Commodities Clause did not apply to it.

Let us now consider the opinion of this Court in such case.

The claim of the Government in the case was that the Commodities Clause required an absolute divorce of the two functions of carrier and producer; that with respect to the Lackawanna Railroad Company, which directly mined coal from lands which it owned in fee, and which it had the express charter right to own, and from which it had the express charter right to produce coal, such clause required the sale of its coal lands. With respect to the anthracite companies which owned the stock of coal companies, such clause required the sale of such stock. The Court below concluded that if the Commodities Clause required such severance, the same was unconstitutional. This Court, on the other hand, concluded that the Commodities Clause did not prohibit the Lackawanna Railroad Company from continuing to own its coal lands or to produce coal therefrom, and did not prohibit other anthracite companies from owning the stock of a coal producing company. It held only that the anthracite companies were required, under the provisions of the clause, to dissociate themselves in good faith from the coal before transporting the same in interstate commerce. It also held that the carrier must have no interest, direct or indirect, in such coal at the time of transportation; and that its ownership of the entire capital stock of a *bona fide* corporation whose product it moved, was not such interest.

The Court held, quoting from the opinion in 213 U. S., at page 412:

> "We think our duty requires that we should treat the prohibitions as having a common purpose, that is, the dissociation of railroad companies prior to transportation from ar-

> ticles or commodities, whether the association resulted from manufacture, mining, production or ownership, or interest, direct or indirect."

And in the recent opinion of Mr. Justice Lamar in another case against this appellee Railroad Company, 231 U. S., 363, the Court says:

> "If such carrier hauls for the public and also for its own private purposes, there is an opportunity to discriminate in favor of itself against other shippers in the rate charged, the facility furnished or the quality of the service rendered."

It is, therefore, clear that the Supreme Court interpreted the Commodities Clause to have been enacted to prevent discrimination between shippers in any of the respects cited in the last quotation, by dissociating the carrier from the commodity at the time of the transportation, in order that there would be a separation between the carrier and the owner of the commodity at the time of such transportation. As we will hereinafter show, the Court was not concerned with the question of who ultimately received the profit from the sale of the commodity, because it expressly held that the carrier might legally own all of the stock of the corporation which owned the commodity at the time of such transportation and thereby receive all profits from the sale of the same. Its only concern was that the commodity transported should be owned by a separate legal entity, which should be separately maintained, keep separate books, and that it and the carrier be subject to the provisions of the Interstate Commerce Act, in order that there might be no discrimination practiced by the carrier in favor of such legal entity, either in the rate

charged, the facility furnished or the quality of the service rendered, as against any other shipper. In other words, the Commodities Clause was construed by the Court to have been enacted for the sole purpose of preventing discriminations between shippers, and not to require the severance by carriers of the functions of transportation and mining. On the subject of stock ownership in a producing company by a carrier it is said, at page 414:

> "Certain it is, however, that in the legislative progress of the clause in the Senate, where the clause originated, an amendment in specific terms, causing the clause to embrace stock ownership, was rejected, and immediately upon such rejection an amendment, expressly declaring that interest, direct or indirect, was intended, among other things, to embrace the prohibition of carrying a commodity manufactured, mined, produced *or owned* by a corporation in which a railroad company was interested as a stockholder, was also rejected (1906, 40 Cong. Rec., Pt. 7, pp. 7012-7014). And the considerations just stated, we think, completely dispose of the contention that stock ownership must have been in the mind of Congress, and therefore must be treated as though embraced within the evil intended to be remedied, since it cannot in reason be assumed that there is a duty to extend that meaning of a statute beyond its legal sense upon the theory that a provision which was expressly excluded, was intended to be included. If it be that the mind of Congress was fixed on the transportation by a carrier of any commodity produced by a corporation in which the carrier held stock, then we think the failure to provide for such contingency in express language gives rise to the implication that it was not the purpose to include it."

It is also said on page 413:

> "If the words in question are to be taken as embracing only a legal or equitable interest in the commodities to which they refer, they cannot be held to include commodities manufactured, mined, produced *or owned*, etc., by a distinct corporation merely because of a stock ownership of the carrier (*Pullman Palace Car Co.* v. *Missouri Pacific R. R.*, 115 U. S., 587; *Conley* v. *Mathieson Alkali Works*, 190 U. S., 406). And that this is well settled also in the law of Pennsylvania is not questioned."

The Court will note that there is absolutely no distinction, either in the clause or in the opinion between the ownership of stock in a producing company and the ownership of stock in a company owning the commodity at the time of transportation. When we examine the amendment proposed by Senator Tillman and referred to in the opinion of the Court, directed to prohibit the carrying of a commodity owned by a corporation in which the Railroad Company was interested as a stockholder, we find that *such amendment was clearly intended to prevent, also, common ownership of railroad and coal companies by the same stockholders.* Senator Tillman stated the purpose of his amendment to the conference committee in the following language (40 Cong. Rec., p. 7011), in criticizing a previous amendment:

> "I have here a communication from a gentleman engaged in coal production, and he points out that this amendment would not prevent the ownership of coal properties by the ownership of stock in coal companies; that it would not prevent the control of coal companies by officials of railway companies; that it would not touch the ownership of railroads by coal companies *or the common ownership of railroad companies and coal companies.*"

It is, therefore, clear, by a parity of reasoning, that the conference committe and Congress did not intend to prohibit the common ownership of railroad and coal companies by the same stockholders, and this Court in concluding, by reason of the rejection of the Tillman amendment, that Congress did not intend to include stock ownership, must also have concluded that Congress did not intend to include the joint ownership of railroad and coal companies by common stockholders.

That the Department of Justice concurred with the foregoing view with respect to what was held by this Court in its determination of the Commodities Clause is clear from a reading of the report of the Attorney General to Congress for the year 1909, at page 57, from which we quote as follows:

> "The Supreme Court upheld the validity of the enactment, but gave it a more restricted meaning than that contended for by the Government, holding that the purpose of the prohibitions was not to forbid common carriers from engaging in the dual business of mining and transportation, but merely to require their dissociation from the coal produced or owned by them prior to transportation. It was further held that the words 'interested directly or indirectly' as used in the statute, did not include ownership by a railroad of stock in the company which mined, manufactured, produced *or owned* the coal transported by such railroad."

The Lackawanna Company, alone of the anthracite carriers, was required to take the necessary steps to comply with this statute as so construed.

We quote from the opinion of the Court below as to the practical considerations which confront-

ed us, how we met the problem and as to the legality of the course adopted (Record, pp. 413-425). (U. S. *v.* D., L. & W. R. R. and D., L. & W. Coal Co., 213 Fed., 240.)

"Turning to the record now under consideration, we find no facts of importance in dispute; the controversy is over the inferences that should properly be drawn therefrom. The relation existing between the two defendants is a direct result of the railroad's effort to obey the decision of the Supreme Court in the first of the cases referred to United States *v.* Delaware & Hudson Co. When that decision was announced on May 3, 1909, the Railroad Company was presented with a serious problem. It owned or leased 15,000 acres of coal lands in the Wyoming region, and these were of great value, both present and prospective. Its mines were producing several million tons of coal each year, and the sale and carriage of this coal were highly important sources of revenue, and its uninterrupted distribution through the established channels of trade was of great importance to the public. It had more than 600,000 tons of mined coal on hand, not yet disposed of, either on storage or in course of transit. A demand for the coal that the railroad had been selling for many years existed throughout a wide tertory, stretching from New England into Canada and the Middle West; and an extended and elaborate organization had grown up in the course of a long and continuous effort to bring the coal to the consumer seasonably and economically. Facilities for storage and handling had gradually been acquired and expanded; numerous contracts had been made with agents and dealers; other contracts existed with independent operators for the purchase of additional coal for carriage and sale

—all this, and much more, resting upon the undisturbed practice of many years under direct State authority, whereby the Railroad Company, mined its own coal, bought coal from others, and carried and sold in many and in widely separated markets the property thus mined and bought.

"This long established business was now to be changed, and changed almost immediately. In our opinion the evidence shows that the railroad intended to obey the law as the Supreme Court had authoritatively announced it, and we may say at once that an examination of the record affords no ground to doubt the good faith of all concerned in the transactions now complained of. No trick or sham or evasion was contemplated or attempted, but a genuine effort was apparently made to comply with the Statute and to carry out openly and publicly what the Court had declared to be necessary. The situation was not welcome, but the railroad clearly understood it and accepted it frankly. No doubt existed that the railroad must dissociate itself in good faith from the ownership of the coal before the act of transportation should begin, and must divest itself of every interest therein, either direct or indirect. Counsel were therefore consulted and a plan was adopted. As a business proposition it was evidently indispensable to find a single purchaser who should be able, financially and in other respects, to handle several million tons a year; it was obviously impracticable to dispose of such a quantity by sales in small lots to small dealers, or for small dealers to distribute afterwards to numerous consumers scattered over so wide an area. So large a quantity, needed in so many places at about the same time, could only be handled by some one with large

capital and with a well-organized and capable force of agents. It was therefore decided that a New Jersey corporation should be organized with a capital sufficiently large, and that this corporation should take over the trained and experienced clerks and agents connected with the coal-sales department of the railroad's business.

"It was recognized as desirable that the relations between the Railroad as the seller, and the proposed coal company as the buyer, should be friendly, and in the first instance the stock in the coal company was offered only to the shareholders of the Railroad Company. They were expected to accept the offer, and this expectation was realized. As is well known, the defendant railroad has had a prosperous career, and in June, 1909, it had a large cash surplus. Out of this fund it declared a dividend of 50%, and offered to its shareholders the right to use one-half the dividend to buy the shares of the proposed coal-sales company at par. The offer was accepted by nearly all the shareholders; the only exceptions were 36 separate interests representing 2,249 shares. Since that time, however, many changes have taken place among the stockholders of either company. Both stocks are dealt in by the public, one on the Exchange and the other on the Curb, the result being that in October, 1913, the shares of the railroad not interested in the Coal Company had increased from 2,249 to 88,716; and the shares in the Coal Company not interested in the Railroad had increased to 6,907. The number of shareholders in the Coal Company had become 1,588, and of these 801 were women, either in their own right or as *cestuis que trustent*.

"The capital subscribed and paid in before Au-

gust 2, 1909, was nearly $6,600,000, but the Railroad Company did not subscribe or pay for a single share, and had no interest therein, direct or indirect. The capital was all subscribed and paid for by individuals; but, as these individuals were also stockholders of the Railroad Company, the Government contends (almost solely for this reason) that the two corporations are in effect identical and cannot be regarded as distinct. If this ground be not well taken, scarcely anything is left of the Government's case—certainly nothing that would support a decree. But, if the contention be sound, the case is made out, and accordingly this point is much insisted upon in the brief, where numerous cases are cited and discussed. We do not think it necessary to take them up in detail. Some of them differ essentially from the case at bar in the fact that they disclose fraud or bad faith as an element, whereas here nothing of the kind exists. But we need not discuss these or any other authorities, because the Supreme Court has already declared distinctly the rule for these particular cases, and has determined that a railroad itself might lawfully hold stock in a manufacturing, mining, producing or owning corporation, upon the single condition that the latter be a *bona fide* organization. * * *

"We may therefore assert with confidence that since a railroad itself may own stock in the producing or owning corporation without offending against the statute, no offense is committed, although individual subscribers to such stock may also be stockholders in the railroad. No Act of Congress or judicial decision has declared it to be illegal for an individual citizen to invest his money in two enterprises, merely because the enterprises

may be closely connected. But what the Supreme Court did lay down was this; although a railroad company may lawfully own stock in a producing or owning corporation, it must not use the power given by such ownership to obliterate the distinction between the two organizations; it must not exert such power so as to commingle indistinguishably the affairs of both, and thus cause both corporations to be one for all purposes; it must not destroy the entity of the producing or owning corporation, and thus make the two virtually one—if it actually do these forbidden things, then the Commodities Clause applies and condemns as unlawful such an abuse of a lawful right. But it is the abuse that is unlawful, not the mere existence of the relation or of the right growing out of the lawful ownership of stock.

"Let us see, therefore, what has been actually done by the two defendants. The railroad owns no stock, and has no legal or equitable interest, in the coal company. As far as the evidence discloses, it has taken little, if any, corporate action except to authorize the contract hereafter quoted. But we may fairly infer, although there is not much positive evidence on the subject, that the plan carried out was initiated and finally agreed upon by some at least—probably by all, or by a majority—of a comparatively small group of thirty-five persons who own a controlling interest in the railroad's stock. They (or nearly all of them, twenty-eight or twenty-nine being the number) also own a majority of the Coal Company's stock, and we take it for granted that they actually control both companies. Being majority stockholders, they have a lawful right to exercise the power of control, provided they exercise it for

lawful objects. We assume also that several other facts upon which the Government lays especial stress are due to the will of this controlling group namely; the facts, that the Vice-President of the Railroad Company, who was the former head of its coal department, became the President of the Coal Company; that a former sales agent of the Railroad Company transferred his services to the Coal Company and has been (and is now), its Vice-President and general sales agent; that the President of the Railroad Company is a member of the Coal Company's Board of Directors, and that three other members are sons of Directors on the Board of the Railroad. As far as these facts go, they are pertinent to the Government's contention, and are legitimately used in the effort to prove that the two corporations are identical. But of themselves they are not sufficient; no effort has been made to show, and we do not understand the Government to suggest, that the sons (who own no stock in the Railroad Company), have been unfaithful to their trust and have betrayed the interests of the Coal Company which they help to direct; there was no serious effort to show that any of the present or former officials of the Railroad Company that are now, or have been, in the Coal Company's service, have used their power or influence improperly. And—what is more to the point in the present inquiry—nothing was offered in denial of what the evidence shows to be a fact, namely, that the Coal Company has never been favored over other shippers of coal by discrimination in rates or in practices, or in facilities or quality of service. * * *"

"We are asked to hold that the facts thus set forth do not establish the good faith of the rail-

road, and therefore to decree that the company's interest in the coal transported continues to exist, in spite of the contract of August 2, 1909, and of the whole course of conduct hereinbefore detailed. The Government prays that we enjoin the defendant from 'shipping, transporting, or causing to be transported, any anthracite coal, the product of mines owned by defendant railroad company, or purchased by it from others, and sold, transferred, or delivered to defendant coal company, in pursuance of the above described agreement or arrangement existing between them, or any similar one.' Manifestly, a decree that goes so far and would destroy so much should rest upon well-established facts, and these in our opinion have not been proved; the evidence is too slender to justify us in drawing the inferences urged by the Government. On the contrary, believing that we have fairly stated the uncontroverted facts, we shall only add that they appear to lead to these conclusions—that the transactions between the two companies began and have been carried on in good faith, in obedience to the decisions of the Supreme Court and in reliance thereon; that the distinction between the two corporations has not been obliterated; that their affairs have not been so commingled as by necesary effect to make their affairs indistinguishable; and that the two are not one for all purposes, but are two distinct and separate legal beings, actually engaged in separate and distinct operations. It follows that the railroad does not own the coal in question, either in whole or in part, during its carriage, but has in good faith dissociated itself therefrom before the beginning of the act of transportation."

The subsequent decision in United States *v.* Lehigh Valley Railroad Company, 220 U. S., 257, confirms the propriety and legality of the action taken. It was there held, quoting from page 274.

> "It must be held that while the right of a railroad company as a stockholder to use its stock ownership for the purpose of a *bona fide* separate administration of the affairs of a corporation in which it has a stock interest may not be denied, the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation and effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable."

After such decision, the defendant, Lehigh Valley Railroad Company, filed an answer to the Government's amended bill, and such case was discontinued by stipulation signed by the Government. The reason for such action on the part of the Government rested in its approval of the subsequent action taken by the Lehigh Valley Railroad Company in the organization of the Lehigh Valley Coal Sales Company, as removing it from the ban of

the Commodities Clause. This corporation was organized in the State of New Jersey, along identical lines with that adopted in the organization of the Coal Company. A form of contract practically identical with that here in issue was then entered into between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company. The Attorney General of the United States was fully advised with respect to the proposed action, and with respect to the action finally taken. In his report to Congress for the year 1912, at pages 23 and 24, it is said:

> "Subsequently, however, the Railroad Company caused to be incorporated under the laws of New Jersey, a separate company, known as the Lehigh Valley Coal Sales Company, with an authorized capital stock of ten million dollars, of which $6,060,800 was issued forthwith. The Lehigh Valley Railroad Company declared a dividend in January, 1912, of ten per cent. on its outstanding capital stock, this dividend amounting in the aggregate to $6,060,800. The preferred and common stockholders of the Railroad Company were given the privilege of subscribing to shares of the Sales Company to an amount equivalent to ten per cent. of their holdings.
>
> "By this method, in effect, the shares of the Sales Company were distributed to and among the stockholders of the Railroad Company. Thereupon on March 1, 1912, the Lehigh Valley Coal Company entered into a contract with the Lehigh Valley Coal Sales Company whereby the former agreed to sell to the latter all coal thereafter mined by it from all coal lands owned or leased by it, together with all coal it may purchase, the Sales Company agreeing to purchase and take all such coal at a price delivered f. o. b. railroad cars, at the breakers

where the same is prepared, at, for all sizes above pea coal, a sum equal to sixty-five per cent. of the general average f. o. b. price of said sizes secured at the water points at or near New York, between Perth Amboy and Edgewater.

"The situation is, therefore, that coal which is shipped over the Lehigh Valley Railroad is mined by the Lehigh Valley Coal Company, all of whose stock is owned by the Railroad Company, and is sold at the breakers to the Lehigh Valley Coal Sales Company, all of which stock has been originally issued to and distributed among the stockholders of the Railroad Company *pro rata*, but which company has separate officers from the Railroad Company, and separate Directors, and whose stock may be sold by the stockholders without regard to their continued holding of stock in the Railroad Company.

"*By this arrangement both the Railroad Company and the Coal Companies seem to have parted in good faith with title to the coal before transportation begins*, and it is claimed, therefore, that transportation is free from the prohibition of the Commodity Clause as construed by the Supreme Court in 213 U. S., 412.

"This question will be submitted to the Court at an early day."

It would, therefore, seem that the counsel now representing the Government are asking the Court to reverse the conclusion deliberately reached by the Attorney General, that the arrangement here at issue does result in a dissociation in good faith of the title to the coal before transportation. Apparently, the only other matter with respect to which any question of legality remains, is as to whether, under such form of organization as was approved by the Attorney General in the Lehigh Valley case, an interest direct or indirect remains

in the Railroad Company because of the management of the Coal Company, within the opinion of this Court in the Lehigh Valley case. We respectfully submit upon the proof in this record that such question was properly determined by the Court below in favor of the appellees. While repeatedly asserted no serious claim is made that the Coal Company is not in every respect managed and controlled as a corporation separately and distinctly from the Railroad Company. It is argued that because the stock of the two companies is owned by the same group of individuals, and because a majority of the Directors of the Coal Company are sons of Directors in the Railroad Company, or officers of the latter, the Coal Company *might* be improperly controlled by the Railroad Company. This argument (as was pointed out by this Court in the Lehigh Valley Case), but begs the question. It is there said:

> "The argument is that the Railroad Company was so excepted, because any control which is exerted on interest which it had in the product of the Coal Company resulted from its ownership of stock in that company, and would not have existed without such ownership. The error, however, lies in disregarding the fact that the allegations of the amended bill asserted the existence of a control by the Railroad Company over the coal corporation and its product, rendered possible, it is true, by the ownership of stock, but which was not the necessary result of a *bona fide* exercise of such ownership, and which could only have arisen through the use by the railroad of its stock ownership for the purpose of giving it, the Railroad Company, as a corporation, for its own corporate purposes, complete power over the affairs of the

> Coal Company, just as if the Coal Company were a mere department of the railroad. Indeed, such a situation could not have existed had the fact that the two corporations were separate and distinct legal entities been regarded in the administration of the affairs of the Coal Company. Granting this to be the case, however, it is in effect urged, as the Railroad Company held all the stock in its Coal Company, and therefore, any gain made or loss suffered by that company would be sustained by the Railroad Company, no harm resulted from commingling the affairs of the two corporations and disregarding the fact that they were separate juridical beings, because, ultimately considered, they were but one and the same. This, however, in substance but amounts to asserting that the direct prohibitions of the Commodities Clause ought to have been applied to a case of stock ownership—particularly to a case where the ownership embraced all the stock of a producing company—and therefore that a mistake was committed by Congress in not including such stock ownership within the prohibitions of the Commodities Clause. We fail, however, to appreciate the relevancy of the contention. Our duty is to enforce the statute, and not to exclude from its prohibitions things which are properly embraced within them."

In other words, the question is not what the Railroad Company might do if it owned all of the stock of the Coal Company, or what joint stockholders might do owning control of both companies. The question is one of fact, with respect to the separate management of the two companies, and as a question of fact was properly determined on this record in favor of the appellees.

Counsel, apparently, are still under the impression that the Commodities Clause required appellee to completely divorce its coal mines from its railroad, and do not yet comprehend what this Court has construed it to mean. The course we adopted was suggested by this Court in its opinion in that case. We quote the following, at pages 412, 413 (213 U. S.):

> "Nor is there force in the contention that because the going into effect of the clause was postponed for a period of nearly two years, therefore the far-reaching and radical effects which the Government attributes to the clause must have been contemplated by Congress. We think, on the contrary, it is reasonable to infer, in view of the facts disclosed in the statement which we have previously excerpted, that the delay accorded is entirely consistent with the assumption that it was so granted to afford the time essential to make the changes which would be required to conform to the commands of the clause as we have interpreted it, *such as providing the facilities for dissociation by sale at the point of production before transportation.*"

It is, therefore, insisted that the *bona fides* of the Coal Company, and the dissociation by the Railroad Company of any interest in the coal at the time of its transportation under the terms of the contract at issue, are established by the opinions of this Court.

The issue here presented was whether or not the Railroad Company had dissociated itself from any interest in the coal which it carried so that it had no "opportunity to discriminate in favor of itself against other shippers in the rate charged, the

facility furnished, or the quality of the service rendered" (D., L. & W. R. R. v. U. S., *supra*, 231 U. S., 363). To present a question within the Lehigh Valley case, it became necessary for the Government to establish that the organization of the Coal Company, and the natural and necessary effect of a sale to it by the Railroad Company of its coal under the terms of the contract at issue, would result in an opportunity to discriminate in favor of the Coal Company by the Railroad Company in one of the respects quoted. This the Government sought to establish. Far from showing this fact the record discloses that the Coal Company is required to pay the same freight charges, the same demurrage charges, and is afforded no other or different rate, facility or service by the Railroad Company than is afforded to any other shipper. The record establishes that the Railroad Company would be only too willing to have other shippers ship coal over its road to the same extent as does the Coal Company, and offers to any such shipper the same rates, the same service, and the same facilities.

It was stated in the opinion of the Court below that the Government based its case almost solely upon the fact that the appellees have the same controlling stockholders. At page 22 of the Government's brief, it is said:

> "The Court gave little or no attention to other elements of the case negativing dissociation, though it is not too much to say that if the element of community of stock ownership, important as it is, were absent altogether, the Government would contend with confidence that the relations between the Railroad Company and the Coal Company in other respects, particularly as regards the contract of Au-

gust 2, 1909, are wholly inconsistent with a real dissociation of the Railroad Company from the coal mined and purchased by it."

The Government then calls attention to the following, upon which it relies to establish the proposition that even if there was no common ownership of stock between the two appellees, the Railroad Company has not dissociated itself from the coal prior to its transportation.

1. That the Railroad Company procured the organization of the Coal Company.

The facts in this regard we have hereinbefore stated. The Court will appreciate that it was essential that a corporation should be formed with adequate capital and with competent management in order that the coal of the Railroad Company might be marketed. The extent of the participation by the Railroad Company in the formation of such company, would seem to be immaterial. It certainly would not have been formed except at the suggestion of the Railroad Company and for the purpose of contracting with it for a sale of its coal.

2. That the incorporators of the Coal Company were connected with the Railroad Company.

This is a pure technicality of compliance with the New Jersey laws with respect to incorporation. Under the State statutes all such State corporations are formed by the filing of a certificate naming incorporators, who subsequently elect Directors by whom the corporation is managed. The naming of incorporators constitutes the preliminary step in the formation of the company.

3. That the subscribers to the capital stock of the Coal Company sent their subscriptions to its

stock to the Treasurer of the Railroad Company, and fourthly, that the capital of the Coal Company came from the Railroad Company.

We fail to see any possible significance in these two facts. The Railroad Company had a perfect right to declare an extra dividend and to distribute the same to its stockholders. By circular it notified its stockholders of the proposed formation of the Coal Company, and that the stockholders might, if they so desired, use half of such extra dividend to subscribe to the stock of such Coal Company, and if they desired so to do a form of subscription to the Treasurer of the Railroad Company for such purpose was enclosed. This was an open and, as we contend, a very proper and businesslike method of handling the matter, and but illustrates the good faith of the transaction. There would have been no difficulty in arranging with a banking institution or some outside agency to act as agent for the purposes if it had been deemed important, and, as we understand the Government's position, that would have removed the transaction from this criticism. While the money originally came from the Railroad Company in the shape of a dividend, it became the absolute property of the stockholders prior to its use by them, for the purpose of subscribing to the stock of the Coal Company, to the same extent as any other money of the stockholders of the Railroad Company.

4. The community of officials between the two companies.

Attention is directed to the fact that both companies have the same counsel. Second, that the auditor of the Coal Company, as a matter of convenience does certain other work for the Railroad Company, and, thirdly, that a Vice-President of

the Railroad Company is President of the Coal Company. These facts are all of minor importance and do not affect the question of whether either company is controlled or dominated by the other. That was an issue of fact and the record conclusively establishes that no such result has followed the joint employment of these individuals.

5. That the contract was entered into perfunctorily by the Coal Company as a puppet of the Railroad Company.

It was, of course, necessary that the Railroad Company, in the first instance, should dictate the terms upon which it would sell its coal. If the contract turned out to be in any respect unfair, provision was made for a revision thereof by agreement or arbitration, or the Coal Company might dissolve the same upon six months' notice. The proof establishes that the contract was in all respects a fair one from the standpoint of the Coal Company and that its profits from the sale of coal have been adequate. One of the few questions which have arisen between them as appears from the record at pages 37 and 76, was a claim by the Railroad Company that the Coal Company should pay more for the coal than required by the terms of such contract.

6. That the contract so entered into contained clauses which precluded the Coal Company from having any independent existence even if not controlled and managed by the officers and Directors of the Railroad Company.

The provisions of the contract on account of which the Government bases such contention, are the following:

First. That the Railroad Company reserves the right to deliver to the Coal Company only such amount of coal as its interests might determine, at its absolute option, and should be subject to no liability for failure to supply the Coal Company with the amount of coal it might desire.

The Railroad Company knew from its past experience that many causes might result in a reduction or indeed a suspension of its mining; the flooding of its mines, fire, labor troubles, breakdown in power, etc. It properly, by the language criticised, protected itself against any claims resulting therefrom.

Secondly. The provision that the Coal Company should conduct its business so as to preserve the good will and markets of the coal mined by the Railroad Company and fill the orders of its responsible former customers, even though as to some of such customers the sales might be unprofitable.

At the time of the contract the Railroad Company had certain outstanding contracts which it felt the Coal Company should protect. It also seemed important that the Railroad Company should protect its customers of long standing and thereby the public from a too selfish business policy on the part of the Coal Company. The record shows that the profits from the sale of coal are much greater in some markets than in others. Suppose the Coal Company should forthwith refuse to sell its coal in the New York market, where the profits were inconsiderable, the result would be disastrous to many large dealers and to the public accustomed to purchase from them. The sixth clause of the contract was designed to prevent this.

Lastly, the clause providing for a termination of the contract by either party on six months' notice, and that in the event of such cancellation the Railroad Company might repurchase the coal of the Coal Company stored or in transit.

The repurchase of the coal at its market value was deemed a proper provision in the interest of the Coal Company and was inserted for its benefit. One of the important reasons for the insertion of the six months' termination clause is explained at page 38 of the record. It was, moreover, apparent that whether the contract would be fair to both parties was wholly problematical. Whether the parties would be satisfied with each other equally so. A business of $35,000,000 a year was involved. The obligations of the Railroad Company to its lessees of coal and to its twenty thousand coal employees were enormous, and it was essential that provision be made for a steady, continuous and increasing production. From the standpoint of either company the contract might prove to be unprofitable and the arbitration provided therein unsatisfactory in results.

All of these provisions but emphasize the fact that the Railroad Company knew that it was forever divesting itself of the sale of its coal and was contracting with a stranger for a permanent fair deal and not with a servant whom it could dominate. It knew that the Coal Company was to be an independent and separate company with a divergent stock interest from the start which might at any time be controlling. These provisions were therefore necessary. If the Coal Company was to be subservient or if the transaction was not *bona fide,* they would have been omitted.

The Government does not claim that the prices to be paid under the terms of the contract for coal on hand, as rentals for facilities, or for coal to be thereafter mined were unfair to either party. As to future coal, the Railroad Company was to receive the prevailing price in the anthracite region, a price which the Government has heretofore contended was excessive and was paid by railroad controlled coal companies to secure a monopoly. Nor can it be contended that the contract did not effectually divest the Railroad Company of all title to the coal at the mines, and subject only to the limited and doubtful protection afforded by the sixth clause, give to the Coal Company the sole right to sell its coal anywhere it pleased and to whomever it pleased. As to prices, it was absolutely free to sell for whatever it saw fit.

All of the foregoing Governmental criticisms present academic and imaginative objections to what might have possibly resulted. Upon the trial no proof was introduced to show that the results so assumed to follow because of such objections in fact occurred. The Coal Company was shown to have purchased coal from others than the Railroad Company to a considerable amount. During the first nine months of the year 1913, such purchases amounted to 310,645 tons (p. 4). The Railroad Company has not, in the upwards of four years since the contract became effective, failed to supply the Coal Company with an abundant amount of coal in tons as follows (pp. 302, 313, 324, 337): 1909 (five months), 4,313,694; 1910, 8,435,528; 1911, 8,390,595; 1912, 7,779,824; 1913 (see report on file with I. C. C.), 7,824,598. As to the sixth clause of the contract, it did not appear that be-

cause thereof the Coal Company was ever in any respect restricted in the conduct of its business or that the Railroad Company ever invoked the same. The same is true of the six months' termination clause.

The only other evidence suggested by the Government to bring this case within the doctrine of the Lehigh Valley case are certain letters referred to at pages 30-33 of the Government brief.

It appeared that for more than six months prior to the hearing at which such letters were introduced inspectors of the Interstate Commerce Commission had examined the files of the appellees and made notes of all letters, statements and memoranda which they thought pertinent to the inquiry then being conducted by the Commission into the rates and practices of anthracite carriers. In such hearing the Railroad Company was subpœnaed to produce a vast number of such letters and memoranda and the letters introduced by the Government in this record were six of the same (p. 139). It would seem to be a fair inference that these six letters alone contained matters thought to be helpful to the Government's case, and of such letters four are referred to in the Government brief. The Court will recall that the Coal Company had been engaged in business at the time of this hearing upwards of four years. The letters were simply introduced in evidence, neither the writers nor the recipients thereof having been called as witnesses.

They were put in evidence for the purpose of showing that the officers of the Railroad Company "have been unable always to view and deal with the Coal Company as a corporation independent of the Railroad Company in any real sense," (p. 30, Government Brief). Three of these letters show

that the Traffic Department of the Railroad Company had consulted the officers and employees of the Coal Company in connection with proposed rates on anthracite coal. This, counsel construes as an impropriety, and as an indication of a difference in treatment of the Coal Company as a shipper when compared with the treatment of other shippers in this regard. The evidence shows no such distinction, and as a matter of common knowledge the fact is that the rate-making power of a railroad company, that is to say, its Traffic Department, usually and habitually consults patrons of its line when rates are proposed to be made affecting their interests as shippers. The traffic official desires to know, and it is his duty to develop, all the facts and circumstances surrounding the traffic which would be affected by the proposed rate, if made. It is eminently proper for him to inquire whether there is any real demand for a rate which he is asked to fix and establish, whether any traffic would move under it if made. It is his business to inquire what the affect will be on similar traffic on his own road when he is asked to make a rate on traffic from a point on another railroad to a point on his own; otherwise he would be unable to judge whether such proposed rate, if established, would be unlawfully discriminatory or unduly disadvantageous to shippers on his own line.

The letter of July 30th, 1911, shows that the Traffic Department of the Railroad Company had been approached on the subject of making rates on anthracite coal, applicable to the transportation thereof, to points on the Buffalo, Rochester & Pittsburg Railroad, and that the Line Sales Agent of the Coal Company had been asked whether

there was any real demand for the rates; in other words, whether there would be any movement under them if fixed and established. The answer is, in effect, that so far as the Coal Company as a shipper is concerned, there was no demand for such rates. There is no warrant in the evidence for the inference sought to be drawn by the Government's counsel that "apparently a freight rate of the Railroad Company on coal was to be reduced or not as the interests of the Coal Company might dictate," or that action was taken on any such consideration.

The evidence shows that the letter of December 30th, 1911, was written as the result of a request by Mr. Mallory, President of the Edison Portland Cement Company, a patron of the railroad, to the Traffic Department thereof, that a reduction be made in the rates on the smaller sizes of coal to New Village, New Jersey, where the plant of the Cement Company was located. Information as to the facts and circumstances surrounding the traffic was sought of the Coal Company, as the shipper chiefly concerned therein, and the information was furnished to the effect that the traffic could not profitably move under the rates in force. The rates, were, accordingly, reduced (p. 140). What the Line Sales Agent of the Coal Company thinks of the binding effect upon the Coal Company of "the ethical obligation of the Railroad Company to industries on its lines" is of no importance in view of the facts.

The letter of March 2nd, 1911, pertains to a request of the General Freight Agent of the Lackawanna & Wyoming Valley Railroad, a trolley road, located in the vicinity of Scranton, for through rates with the Delaware, Lackawanna and Western

Railroad Company on smaller sizes of coal produced at a washery on the line of the trolley road. The purpose of the through rates was to enable such producer of coal on its line to get his product, at a fair rate, to points in Scranton on the line of the Lackawanna (p. 140). In order to ascertain the effect which the making of such rates would have upon the traffic local to the Delaware, Lackawanna and Western Railroad Company, the Traffic Department thereof consulted the Coal Company, the chief shipper on its line. As we have said, there can be no impropriety in this. It was the duty of the traffic official to consult the shipper and all shippers who might be affected by the proposed action. There is no warrant in the evidence for the inference sought to be drawn by the Government's counsel that "the Railroad Company is thus seen extending rate privileges to outsiders, in order to relieve the Coal Company from supplying nearby industries, so that it might send its shipments out along the line of the Railroad Company and thereby increase the latter's earnings." But we can see nothing that is not meritorious in making proper rates which result on the one hand in adding to the stock of the much-needed small sizes available for distribution at long haul points on the railroad, and on the other hand, in increasing the revenue of the carrier.

In conclusion, it does not appear in any instance that the action of the Traffic Department upon the several requests for rates referred to was affected by the consideration insinuated by the Government's counsel.

The letter of March 16th, 1910, is explained at page 139 of the record.

The foregoing is the Government's case and we respectfully submit that the Court below properly held it to be wholly insufficient to justify the granting of the relief sought.

POINT III.

The contract in issue does not restrain interstate commerce.

The Government argues at pages 37 and 38 of its brief that the contract of August 2nd violates the Anti-Trust Act because it restricts the right of the Coal Company to carry on its business in that it is not permitted to purchase coal of anyone except the Railroad Company without the consent of the Railroad Company; is bound to accept as much or as little coal as the Coal Company sees fit to deliver and is not free to select its markets or its customers.

As the Railroad Company agrees to sell all of its coal to the Coal Company, and as it is certainly to the interest of the Railroad Company to mine and sell as much coal as is possible, there would seem to be no point to this branch of the argument. We have hereinbefore explained the reasons for the insertion of the clause relieving the Railroad Company from liability for failure to supply the Coal Company with the amount of coal it desires. The Railroad mines all the coal it can mine yearly, and the suggestion that the Railroad Company could bring disaster upon the Coal Company by forcing upon it more coal than it could sell, is absurd. Nor is it true in fact, as we have hereinbefore shown, that the Coal Company does not buy coal from others than the Railroad Company and is not free to select its markets or

its customers. The Government has failed to show that the Coal Company is restricted in any respect in actual practice in this regard and did not attempt to introduce any evidence upon this subject.

The Court will note that this point originated in the mind of the counsel for the Government who prepared such brief. No such suggestion is contained in the petition; no such point was presented to the Court below; no assignment of error from the Court below raises the point here. Under these circumstances, we should assume this Court would not consider it.

Rogers *v.* Ritter, 12 Wall., 317.
Ansbro *v.* U. S., 159 U. S., 695.
U. S. *v.* Am. Bell Tel. Co., 167 U. S., at page 263, and cases cited.
Rodriguez *v.* Vivoni, 201 U. S., 371.
Paraiso *v.* U. S., 207 U. S., 368.

It is also argued that the contract is in restraint of trade because it provides that the Coal Company shall pay the Railroad Company for its coal on the basis of 65 per cent. of the tidewater price, and that because of such method of payment, the railroad is interested in the price at which the coal sells, wherefore the contract is a barrier against any reduction in the Railroad Company's freight rates to tide water.

While allegations to this effect were contained in the petition, and the point is saved in the assignments of error, it was not made by counsel in the Court below. Counsel there representing the Government argued that because of the 65 per cent. provision of the contract the Railroad Company retained an interest in the coal, which claim the Government now concedes to be unwarranted.

It was impossible for the parties to agree upon certain fixed prices at which the coal to be thereafter mined by the Railroad Company should be sold to the Coal Company. The practice prevailing in the anthracite region for many years was therefore adopted, namely, that the Coal Company should pay the Railroad Company for all coal thereafter to be delivered to it an amount equal to 65 per cent. of the selling price of all coal at New York Harbor points. The contract provided in this regard, at page 370: "The intent of this provision being to ascertain and fix the market price of the coal at the mines as nearly as may be as of the several and respective dates of delivery of the coal at the mines." It appears from the record, pages 102 and 103, that for the year 1912 less than two million tons of coal was sold by the Coal Company at tide water points, of which 75 per cent. were small sizes, leaving five hundred thousand tons of prepared coal only. In other words, less than 10 per cent. of the prepared sizes of coal sold by the Railroad to the Coal Company was shipped by the Coal Company to tide water points. All of the rest was shipped to Canada and the west. Only the prepared coal of the Coal Company shipped by it to tide water would enter into the total amount of coal sold at tide water in fixing the market price of such coal. The petition, page 351, alleges that from eighteen to twenty million tons of coal are annually sold at tide water points. Of this the coal of the Coal Company would be some 5 per cent. The Court will note that the price to be paid to the Railroad Company by the Coal Company is determined from the selling price of all coal at New York Harbor points, and the whole argument of the Government presupposes that if there was a reduction in freight

rates, it would reduce the selling price of coal. If, for the purpose of the argument, we should assume this to be true, it is apparent from the foregoing that a reduction even of ten cents a ton in the freight rate upon the appellee's railroad would affect but 5 per cent. of the coal sold at New York Harbor, and be *de minimus* when added to the price at which the other nineteen and a half million tons of coal was sold to affect the price to be paid the Railroad Company by the Coal Company.

But it is not true that a reduction in the rate would reduce the price. Certainly this does not necessarily follow and it was incumbent upon the Government, if it sought to make such argument, to prove such fact. If there has been an effort to make proof of that character we would have shown that no such result followed the various reductions in anthracite rates made by the Commission during the past fifteen years. In no instance was the price of coal reduced because of a reduction in rates.

Moreover, the Railroad Company no longer has any real power to fix or to maintain rates. What remains with it is scarcely more than the power to propose rates, the power to suspend rates so proposed, to reduce existing rates and to prescribe those which shall obtain in the future, having been vested in the Interstate Commerce Commission. As the record shows, the Commission has for months been conducting an inquiry into the subject of anthracite rates and concededly will make an order fixing future rates within a short time. The Railroad Company must adopt the rates so fixed and would undoubtedly be restrained by the Commission from putting in lower rates as it

would be restrained if it attempted to put in higher rates than those so fixed.

It is common knowledge that anthracite coal is and has been sold at the mines on a very narrow margin of profit. The figures presented at page 40 of the Government brief from which it argues that a 50 cent per ton reduction in the freight rate would result in a reduction of $1,365,000 in the Railroad Company's income from the sale of its coal, are wholly erroneous. If, however, we should assume that the Commission reduced the rates to the amount of 50 cents per ton, and if we should also assume that as the result of such reduction the income of the Railroad Company was reduced to the amount stated, the natural and inevitable result would be that the Railroad Company would demand a correspondingly increased price for its coal. In other words, the Railroad Company could not afford to sell its coal for a less price than it is now receiving, and if such price were reduced under the 65% provision because of a reduction in rates, it would insist that the Coal Company pay an advanced price.

Conclusion.

The decree of the District Court should be affirmed. The Government asks that with respect to the questions presented by the petition charging a monopoly in the production and sale of coal, the bill be dismissed without prejudice in order that the Government may not be foreclosed as to such questions. We would again direct the attention of the Court to the fact that such questions were fully presented by the petition, were fully gone into by counsel for the Government in the proof,

and were briefed and presented to the Court below. The Court below also in its opinion intimated that if the Government desired to urge such points it would permit a reargument of the case thereon. Under the circumstances it would seem unfair that we should again be called upon to meet such issues.

Respectfully submitted,
JOHN G. JOHNSON,
Counsel for Appellee Coal Company.
WILLIAM S. JENNEY,
Counsel for Appellee Railroad Company.